MT LEGISLATIVE HISTORY

Chapter 490 1977

Bill H _____ S 31 Original bill & hist. ✓C

H. Committee on Taxation			S. Committee on Taxation		
Hearing Date(s)	MAR 23	✓C	Hearing Date(s)	JAN 11	✓C
	APR 7	✓C		3-7	—C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	APR 7	✓C		MAR 8	✓C

Did this bill originate in an interim sub committee? ✓ Yes ___ No

Committee _____ Report _____

Free Joint Conference Committee ~~=~~ minutes: the Law Library has no minutes for ~~this~~ this committee for this bill. The Historical Society Library / Archives may have them if the committee took minutes. Call 406-444-2681.

House Page No. 182, 184, 871, 879, **890,** 1119, 1137, 1209.

31 Introduced by Watt: A bill for an act entitled: "An act to implement the recommendations of the Interim Subcommittee on Taxation, revising and updating the Montana Inheritance Tax with regard to joint estates and exemptions; amending Sections 91-4405, 91-4409, 91-4410, 91-4414, 91-4416, 91-4419, and 91-4453, R.C.M. 1947."

Senate Page No. 5, 651, 667, 713, 736, 745, **770,** 1160, 1202, 1215, 1238, 1307, 1308, 1309, 1338, 1353, 1359, **1363, 1456,** 1457.

House Page No. 1026, 1027, 1366, 1369, **1379,** 1466, 1467, 1468, 1521, 1522, 1529, **1530,** 1566.

32 Introduced by Towe, Turnage: A bill for an act entitled: "An act removing and clarifying statutory references to sovereign or governmental immunity to coordinate those references with Article II, Section 18, of The Constitution of the State of Montana or provisions of Title 82, Chapter 43, R.C.M. 1947, as amended; amending Sections 1-502, 16-1802, 17-205, 32-4722, 40-4401, 40-4402, 75-8310, and 93-2815, R.C.M. 1947; and repealing Sections 11-1305, 11-1306, 16-2731, 16-2732, 16-2733, 31-172, 69-6405, 75-5940, and 76-243, R.C.M. 1947."

Senate Page No. 5, **294,**.

33 Introduced by Blaylock: A bill for an act entitled: "An act to generally revise, repeal, and recodify the election laws relating to the criminal provisions for election and campaign practices."

Senate Page No. 5, 366, 412, 457, 488, **496,** 867, 1006, 1017, 1037.

House Page No. 672, 673, 1059, 1097, **1105,** 1288, 1315, 1390.

34 Introduced by Hazelbaker: A bill for an act entitled: "An act for the general revision of the laws concerning crimes."

Senate Page No. 5, 186, 213, 229, 233, **252,** 867, 1148, 1149, 1165, 1271.

House Page No. 297, 298, 1059, 1097, **1105,** 1393, 1397, 1495.

35 Introduced by Galt, Roskie, Flynn, Hazelbaker, Manley, McCallum: A bill for an act entitled: "An act amending the State Conservation Districts Law providing for excluding territory from existing districts; revising procedures for election of district supervisors; amending 76-105, 76-106, and 76-107, R.C.M. 1947."

Senate Page No. 11, 47, 53, 60, 63, **77,** 286, 300, 315, 493, 521, 553, 607.

House Page No. 111, 112, 226, 254, 261, **312,** 386, 684, 753.

36 Introduced by Devine: A bill for an act entitled: "An act to allow a beer wholesaler to give beer to specifically invited guests in a hospitality room on his property; amending Sections 4-3-215 and 4-3-216, R.C.M. 1947."

SENATE BILL NO. 31

INTRODUCED BY WATT

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE INTERIM SUBCOMMITTEE ON TAXATION, REVISING AND UPDATING THE MONTANA INHERITANCE TAX WITH REGARD TO JOINT ESTATES AND EXEMPTIONS; AMENDING SECTIONS 91-4405, 91-4409, 91-4410, 91-4414, 91-4416, 91-4419, AND 91-4453, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 91-4405, R.C.M. 1947, is amended to read as follows:

"91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property. Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, is inscribed in ~~co-ownership~~ coownership form, ~~or~~ held by two or more persons in joint tenancy ~~by-two--or--more--persons,~~ or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer. The tax is upon the transfer of ~~decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property to which the transfer relates belonged to the joint tenants, tenants by the entirety, joint depositors, holders in co-ownership form, or persons, as tenants in common, and had been, for inheritance tax purposes, bequeathed or devised to the survivor or survivors by will, except such part thereof as may be shown to have originally belonged to the survivor and never to have belonged to the decedent.~~ the full value of the property, except that portion originally owned by the survivor. ~~This section shall not be construed to repeal or modify the provisions of section 91-4402.~~"

Section 2. Section 91-4409, R.C.M. 1947, is amended to read as follows:

"91-4409. Primary rates, where remaining amount not in excess of $25,000.00. ~~When the property or any beneficial interest therein passes by any such transfer to any person, institution, association, corporation or body politic, where the amount of the property shall exceed in value the exemption hereinafter specified, and shall not exceed in value twenty-five thousand dollars ($25,000.00), the tax hereby imposed shall be:~~ The exemptions allowed by 91-4414 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution,

association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value of the remaining amount of the total value of property or beneficial interests at the following rates:

(1) ~~Two-per-cent.--Where~~ at the rate of 2% of the clear value of the interest in property passing to a person if the person ~~or--persons~~ entitled to any beneficial interest in such property ~~shall-be~~ is:

(a) the husband, wife, lineal issue, or lineal ancestor of the decedent; ~~or~~

(b) any child adopted as such in conformity with law, or any child to whom such decedent for not less than ~~ten (10)~~ years prior to such transfer stood in the mutually acknowledged relation of a parent, ~~provided,--however,~~ such relationship began at or before the child's ~~fifteenth (15)~~ 15th birthday, and was continuous for ~~ten (10)~~ years; or

(c) any lineal issue of such adopted or mutually acknowledged child; ~~at-the-rate-of-two-per-cent-(2%)-of-the clear--value--of--such--interest-in-such-property-passing-to such-person.~~

(2) ~~Four-per-cent.--Where~~ at the rate of 4% of the clear value of the interest in property passing to a person if the person ~~or-persons~~ entitled to any beneficial interest in such property ~~shall-be~~ is:

(a) the brother or sister or a descendant of a brother

or sister of the decedent; ~~or~~

(b) a wife of a son, or the husband of a daughter of the decedent; ~~at--the--rate--of-four-per-cent-(4%)-of-the clear-value-of-such-interest-in--such--property--passing--to such-person.~~

(3) ~~Six-per-cent.--Where~~ at the rate of 6% of the clear value of the interest in property passing to a person if the person ~~or--persons~~ entitled to any beneficial interest in such property ~~shall-be~~ is the uncle, aunt, or first cousin of the decedent; ~~at-the-rate-of-six-per-cent-(6%)-of-the clear-value-of-such-interest-in--such--property--passing--to such-person.~~

(4) ~~Eight-per-cent.--Where-the-person-or-persons~~ at the rate of 8% of the clear value of the interest in property passing if the entity entitled to any beneficial interest in such property ~~shall-be~~ is:

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated; ~~or-shall-be~~

(b) is a stranger in blood to the decedent; or

(c) ~~shall--be~~ is a body politic or corporate, ~~at-the rate-of-eight-per-cent-(8%)--of--the--clear--value--of--such interest---in---such---property---passing--to--such--person, institution,-association,-corporation-or-body-politic.~~"

Section 3. Section 91-4410, R.C.M. 1947, is amended to read as follows:

"91-4410. Other rates, where remaining amount in excess of $25,000.00. The ~~foregoing~~ rates in ~~section~~ 91-4409 are for convenience termed the primary rates~~.~~. When the amount of the clear value of ~~such~~ the remaining amount of the property or interests exceeds ~~twenty-five--thousand dollars ($25,000.00)~~, the ~~rates~~ rate of tax upon such excess shall be as follows:

(1) ~~Rate where amount $25,000.00 to--$50,000.00--Upon~~ upon all in excess of ~~twenty-five--thousand--dollars ($25,000.00)~~, and up to ~~fifty-thousand-dollars ($50,000.00)~~, two ~~(2)~~ times the primary ~~rates~~ rate;

(2) ~~Rate where amount $50,000.00 to $100,000.00.--Upon~~ upon all in excess of ~~fifty-thousand-dollars ($50,000.00)~~, and up to ~~one-hundred-thousand-dollars ($100,000.00)~~, three ~~(3)~~ times the primary ~~rates~~ rate;

(3) ~~Rate--where amount over $100,000.00.--Upon~~ upon all in excess of ~~one--hundred--thousand--dollars--($100,000.00)~~, four ~~(4)~~ times the primary ~~rates~~ rate."

Section 4. Section 91-4414, R.C.M. 1947, is amended to read as follows:

"91-4414. Exemptions~~.~~ ~~from---first--$25,000.----The following--exemptions--from--the-tax-are-hereby-allowed,-the~~ (1) The exemption allowed to each person, institution, association, corporation~~,~~ and or body politic to shall be taken ~~out-of-the-first-twenty-five-thousand-dollars--passing~~

~~by---any---such---transfer---to--such--person,--institution, association,-corporation-or--body--politic~~ as provided in 91-4409~~.~~.

~~(1)~~ (2) ~~Transfers~~ The following transfers are totally exempt~~.~~:

(a) ~~All~~ all property transferred to the state or any of its institutions~~,~~ or to municipal corporations within the state for strictly county, city, town, or municipal purposes~~,~~ ~~shall be exempt~~.;

(b) ~~All~~ all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust~~,~~ organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual~~,~~ and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, ~~shall be exempt~~, if any of the following conditions is present:

~~(a)~~ (i) ~~The~~ the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

~~(b)~~ (ii) ~~The~~ the property transferred is limited for

use within this state;

~~(c)~~ (iii) ~~In the event that~~ the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country, and at the date of the decedent's death any one of the following conditions existed:

~~(i)~~ (A) ~~The~~ the other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

~~(ii)~~ (B) ~~The~~ the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or

country;

~~(iii)~~ (C) ~~The~~ the society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(3) The clear value of one-half of the property distributed or passing to decedent's surviving spouse is exempt.

~~(2)~~ (4) ~~$25,000; $5,000; $2,000 exempt, when Property of the clear value of twenty-five thousand dollars ($25,000)~~ The following amounts are exempt:

(a) property of the clear value of $40,000 transferred to the ~~wife or to the husband~~ surviving spouse of the decedent; ~~five thousand dollars ($5,000)~~

(b) property of the clear value of $15,000 transferred to:

(i) each minor lineal issue of the decedent; ~~or~~;

(ii) any minor child adopted as such in conformity with law; ~~or~~;

(iii) any minor child to whom such decedent for not less than ~~ten (10)~~ years prior to such transfer stood in the mutually acknowledged relation of a parent, provided,

however, such relationship began at or before the child's fifteenth (15) 15th birthday, and was continuous for ten (10) years; or

(iv) any minor lineal issue of such adopted or mutually acknowledged child; and two thousand dollars ($2,000)

(c) property of the clear value of $7,000 transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in the first subdivision of section 91-4409(1) shall be exempt.

(5) Any child of the a decedent shall be is entitled to credit for so much of the tax paid by the wife or husband the decedent's spouse as applied to any property which shall is thereafter be transferred by or from such husband or wife spouse to any such the child, provided the husband or wife spouse does not survive said the decedent to exceed ten 10 years.

(3) (6) $500 exempt; when. Property of the clear value of five hundred dollars $1,000 transferred to each of the persons described in the second subdivision of section 91-4409(2) shall be is exempt.

(4) (7) Property without the state exempt; when. No tax shall may be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is

subject to an inheritance or transfer tax in the state where located and which the tax has actually been paid, secured, or guaranteed, provided such property is not without this state temporarily nor or for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Section 5. Section 91-4416, R.C.M. 1947, is amended to read as follows:

"91-4416. Discount -- interest. (1) If such the tax is paid within eighteen (18) months from the accruing thereof of the death of the decedent, a discount of five per cent (5%) shall be allowed and deducted therefrom. The deduction of this discount of five per cent (5%) shall be accomplished by paying within the eighteen (18) month period from the date that the tax accrues an amount equal to ninety five per cent (95%) of the total tax declared due by the person making payment.

(2) If such tax is not paid within eighteen (18) months from the accruing thereof of the death of the decedent, interest shall be charged and collected thereon at the rate of ten per cent (10%) per annum a year from the time the tax accrued, unless by reason because of claims made upon the estate, necessary litigation, or other

unavoidable cause of delay, ~~such~~ the tax ~~shall~~ is not be determined and paid as herein provided, in which case interest at the rate of ~~six per cent (6%)~~ shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which time ~~ten per cent (10%)~~ shall be charged. ~~, provided that litigation~~ Litigation to defeat the payment of the tax ~~shall not be considered~~ is not necessary litigation. ~~In all cases when~~ When a bond ~~shall be~~ is given under ~~the provisions of section~~ 91-4419, interest shall be charged at the rate of ~~six per cent (6%)~~ after ~~one (1)~~ year from the date of death, until the date of payment thereof."

Section 6. Section 91-4419, R.C.M. 1947, is amended to read as follows:

"91-4419. Bond for deferred payment of tax. ~~(a)~~ Any beneficiary of any property charged with a tax under ~~this act~~ 91-4401 through 91-4406, and any ~~executors, administrators~~ personal representative ~~and~~ or ~~trustees~~ trustee ~~thereof~~ of the estate, may elect, within ~~eighteen~~ 18 months from the date of the death of decedent or transfer ~~thereof as herein provided~~ of the property, not to pay such tax until the person ~~or persons~~ beneficially interested ~~therein shall~~ come comes into the actual possession or enjoyment thereof. The person ~~or persons~~ so electing shall give a bond to the state ~~in a penalty of three times~~ for the

amount of ~~any such~~ the tax, with such sureties as the district court of the proper county or the ~~state~~ department of revenue, as the case may be, may approve, conditioned for the payment of ~~such~~ the tax and interest thereon, ~~at such time or period as~~ at the time the person ~~or persons~~ beneficially interested therein ~~may come~~ comes into the actual possession or enjoyment of ~~such~~ the property. ~~which~~ The bond shall be filed in the district court, or in the office of the state treasurer as the case may be. Such bond must be executed and filed and a full return of such property upon oath made to the district court or the department of revenue within 18 months from the date of the death of decedent or transfer as herein provided, and such bond must be ~~renewed every 5 years, and said deferred tax shall bear interest at 6% per annum after such 18 months~~ kept in force until the tax and interest are paid in full."

Section 7. Section 91-4453, R.C.M. 1947, is amended to read as follows:

"91-4453. Definitions. ~~(1)~~ The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and not as the property or interest therein of the decedent, grantor, donor, or vendor, and shall include all personal property within or

without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein prescribed to each individual or corporation. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. "Intangible" or "intangible property", when used in this act without other qualifications, shall be taken to include all moneys, stocks, bonds, notes, securities, and credits of all kinds, secured or unsecured. The words "county treasurer", "public administrator", and "county attorney", as used in this act shall be taken to mean the treasurer, public administrator, and county attorney of the county in which the district court has jurisdiction of the proceedings.

(2) The terms "joint" and "jointly" as used in this chapter refer to ownership of property by two or more persons having as one of the incidents of such ownership the right of survivorship in the surviving owner or owners upon the death of one of the owners. This definition does not affect the concept of property owned as tenants in common, and this type of ownership shall continue to be recognized where applicable."

-End-

STATE OF MONTANA

REQUEST NO. 2-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 4, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 31 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 31 is an act to revise and update the Montana Inheritance tax with regard to joint estates and exemptions.

ASSUMPTIONS:

1. The effects of the proposed legislation will not be felt for eighteen (18) months, the period between death and due date of Inheritance Taxes.
2. Collections under current law would be $7 million in each of the next two fiscal years.
3. Inheritance tax collections are homogenous – 1/12 of the revenue will be collected each month.
4. The full effect of the proposed legislation will be to reduce inheritance tax collections by 27% and 33% annually.
5. There will be no change in administrative costs.

REVENUE IMPACT:	FY '78	FY '79
Inheritance tax under current law	$7 million	$7 million
Inheritance tax under proposed law	$7 million	$5.845 – $6.055 million
Decrease in inheritance collections	$ –0–	$.945 – $1.155 million

LOCAL IMPACT:

None

LONG RANGE IMPACT:

The full effect of the proposed legislation will not be felt until FY '80 and all subsequent years when collections will be reduced by approximately 27% – 33% under what they would be under current law.

Richard L. Dunn

BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1-10-77

STATE OF MONTANA

REQUEST NO. 2-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 13, 19 77, there is hereby submitted a Fiscal Note for Amended Senate Bill 31 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION

Senate bill 31 is an act to revise and update the Montana Inheritance tax with regard to joint estates and exemptions.

ASSUMPTIONS

1. The effects of the proposed legislation will not be felt for 18 months, the period between death and due date of inheritance taxes.
2. Collections under current law would be $7M in each of the next two fiscal years.
3. Inheritance tax collections are homogeneous - 1/12 of the revenue collected each month.
4. The full effect of the proposed legislation will be to reduce inheritance tax collections by between 45% to 55% annually.
5. There will be no change in administrative costs.

REVENUE IMPACT

	FY 78	FY 79
Inheritance Tax under current law	$7 million	$7 million
Inheritance Tax under proposed law	$7 million	$5.425-$5.075 million
DECREASE in inheritance tax	$ -0-	$1.575-$1.925 million

LOCAL IMPACT

NONE

LONG-RANGE IMPACT

The full effect will not be felt until FY 80 and subsequent years when collections will be reduced by 45%-55% under what they would be under the current law.

PREPARED BY: Department of Revenue

BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1-14-77

KFM
9011.62
.T38
1976a

RESERVE

INTERIM STUDY
BY THE
SUBCOMMITTEE ON TAXATION

Montana's Inheritance Taxes

December 1976

Distributed By

MONTANA LEGISLATIVE COUNCIL
State Capitol
Helena, Montana 59601

Membership
Subcommittee on Taxation

Senator Robert D. Watt, Chairman	Rep. W. Jay Fabrega, Vice-Chairman
Senator Larry Aber*	Rep. Harrison Fagg
Senator William L. Mathers	Rep. Melvin Williams
Senator William Norman	Rep. Dan Yardley

* Replaced Senator Robert Brown, who resigned.

Montana Legislative Council:

RESEARCHER, TERESA OLCOTT COHEA

Director of Research, Bob Person
Executive Director, Rose Weber
Chairman, Representative Robert L. Marks

TABLE OF CONTENTS

		Page
I.	SUMMARY OF RECOMMENDATIONS	ii
II.	INTRODUCTION	1
III.	HISTORY AND BACKGROUND	2
	A. History	2
	B. Revenue produced by the tax	3
	C. Administrative and compliance costs of the tax	5
	D. Incidence of the tax	5
IV.	CONCERNS ABOUT MONTANA'S INHERITANCE TAX	8
	A. Federal changes and proposed state changes	8
	B. Effect of Montana's inheritance tax on family farms and businesses	9
V.	ALTERNATIVES	11
	A. Estate taxes	
	Estate tax limited to federal credit	11
	Percent of federal taxable estate	12
	Estate tax modeled on federal estate tax	13
	B. Amendments to existing inheritance tax statutes	
	Increased exemptions	14
	Deferred payments	15
	Lower bonding requirements	16
	Alternate methods of valuing property	17
VI.	SUBCOMMITTEE DELIBERATIONS	18
VII.	MINORITY REPORT	20
VIII.	NOTES	22
IX.	BIBLIOGRAPHY	26

APPENDIX A. A Bill for an Act Entitled: "An Act to Revise and Update the Montana Inheritance Tax with regard to joint estates and to increase exemptions; amending sections 91-4405, 91-4409, 91-4410, 91-4414, 91-4416, 91-4419, and 91-4453, R.C.M. 1947."

APPENDIX B. Minority Bill. A Bill for an Act Entitled: "An Act to replace the inheritance tax with an estate tax based upon the state credit allowed in the federal estate tax, repealing chapter 44 of Title 91."

I

SUMMARY OF RECOMMENDATIONS

The Subcommittee on Taxation recommends that the 1976 Montana Legislature:

(1) enact a bill to revise and update the Montana inheritance tax with regard to joint estates and to increase exemptions.

A minority report appears in Chapter VII.

II

INTRODUCTION

The Committee on Priorities assigned the Subcommittee on Taxation a "comprehensive study of death and inheritance taxes and related exemptions" in response to a request from the House Taxation Committee, the introduction of SJR 10 calling for a study of the tax, and the debate aroused by SB 27 over higher exemptions.

Legislators calling for the study noted that Montana's inheritance tax laws have remained virtually unchanged since 1923. Since that time, the value of estates has risen sharply, federal laws have changed, and Montana's laws on probate have been radically altered. Legislators requested a general study of the tax to determine whether it still benefited the state and its citizens and to suggest legislation that would reflect the changes in federal and state law.

The Subcommittee on Taxation has studied Montana's inheritance tax at length during the past interim, collecting evidence on the tax's effect from many citizens and soliciting suggested amendments from bankers, lawyers, farmers, and other groups. Testimony from the public was heard at three meetings and draft legislation widely distributed for comment. The Subcommittee sought the aid of the Montana Uniform Probate Code Committee in determining how inheritance tax laws should be amended to reflect the newly enacted Uniform Probate Code.

During the course of its study, the Subcommittee considered a variety of death taxes, including different types of estate taxes and amendments to existing inheritance tax laws. These alternatives are discussed in the attached report. From these alternatives, the majority of the Subcommittee selected a bill which (1) raised exemptions, (2) allowed the primary tax rate to be used for the first $25,000 of the value upon which the tax was due, and (3) lowered the amount of bond minors who wished to defer payment of inheritance taxes until they come into actual possession must post. The bill containing these amendments appears in Appendix A.

Senator Mathers and Representative Fabrega voted against the majority bill in support of a bill that repeals inheritance taxes, leaving only the "pickup" tax or federal credit. Their minority report appears in Chapter VII and the bill is Appendix B.

The Subcommittee and its researcher thank Thomas Stoll and the staff of the Inheritance Tax Division for their help and cooperation in this study.

III

HISTORY AND BACKGROUND

A

Since America's colonial days, death taxes have been levied for two purposes: to raise revenue and to redistribute income by reducing the amount of wealth that could be passed from one generation to another. During the past two centuries, death taxes have evolved in most states from a simple percentage of the value of an estate transferred to collateral heirs into a relatively complex system allowing different exemptions for degrees of kinship and a progressive rate of tax on the transfer of large estates.[1]

Montana's inheritance taxes have followed this national pattern closely. In 1897, the legislature enacted the state's first inheritance taxes in an effort to find a new source of revenue and decrease the state's almost complete dependence on property taxes. The legislature modeled the law upon the New York inheritance tax structure, as did fourteen other states enacting inheritance taxes during the same period. Montana's tax allowed a class exemption of $7,500 for family members -- whether one or many inherited the estate. The rest of the value of the estate was taxed at 1%. Non-family members were allowed a total exemption of $500 and paid 5% on the value of the rest of the estate. The tax was challenged on the grounds that it was not uniform upon the same class of subjects, but the Montana Supreme Court ruled that the tax is on the privilege of receiving the property, and because this privilege is a creature of law rather than a natural right, the legislature may impose any burden it deems fit upon the privilege.[2]

By the turn of the century, national social reformers of the Populist and Granger movements began to argue that the privilege of inheritance should be taxed both heavily and non-uniformly to insure that family fortunes were broken up and economic classes equalized. These reformers proposed a progressive rate of taxation, increasing sharply for large estates and for collateral relatives (relatives other than children). In 1908, the Oklahoma legislature enacted an extreme example of this concept: the tax rate was 100% on medium-size estates, a rate which was quickly challenged in court. Most states adopted a more moderate rate, while keeping the progressive nature of the tax and its varying rates for degrees of kinship. By the 1920's, over thirty states had enacted progressive inheritance tax rates.[3]

Montana followed the national trend in 1921 and 1923 by adopting similar legislation. The legislature used the Wisconsin law as a model, as did thirty-seven other states. This law

set up progressive rates, graduated these rates for direct and collateral heirs, established comprehensive definitions of what was taxable property, allowed exemptions for charities, and centralized administration and collection.[4]

While ideals of social reform may have prompted the adoption of Montana's new law, the increased revenue was a major consideration. Montana agriculture "fell upon evil days" in the years 1917 through 1923 when below normal precipitation and falling prices caused the foreclosure of over 30% of Montana farms. The legislature established a Tax and License Commission to study the state's tax structure and to determine new sources of revenue not dependent on taxing land. In the 1921 legislative session, five new license taxes were imposed and the new inheritance tax passed.[5]

The revised inheritance tax, as amended by the 1923 legislature, administered by the newly-created State Board of Equalization, established the following tax rates and exemptions:

a. $17,500 for widows of the decedent

b. $5,000 for husband

c. $2,000 for children, parents, adopted children

d. $500 for brothers, sisters, nieces, nephews, sons- or daughters-in-law[6]

Inheritances exceeding the exemptions but less than $25,000 were taxed at "primary rates": 1% for classes a, b, and c; 2% for class d; 3% for uncles, aunts, and first cousins; 4% for all others. Heirs paid twice the primary rate for the remaining value of their share between $25,000 and $50,000; three times for the remaining amount between $50,000 and $100,000; and four times the rate for remaining amounts over $100,000. Thus, a son or daughter inheriting a $100,000 taxable share would pay $2,230, compared to $925 under the 1897 law.

Since 1923, Montana's inheritance taxes have changed little. Primary rates were doubled in 1933, as part of the legislature's renewed attempts to supplement property tax revenue dwindling under what the State Board of Equalization termed "unparalleled depressed financial conditions."[7] Exemptions have been increased periodically for spouses and minor children but have remained static for adult children. Today, the rates and exemptions are:

	Exemption	Rate on first $25,000 less exemption	Rate on next $25,000	Rate on next $50,000	Rate on balance
Widow—When decedent died prior to July 1, 1965.	$17,500.00	2%	4%	6%	8%
Widow—When decedent died on or after July 1, 1965.	$20,000.00	2%	4%	6%	8%
Widow—When decedent died on or after July 1, 1974.	$25,000.00	2%	4%	6%	8%
Husband—When decedent died prior to July 1, 1965.	$5,000.00	2%	4%	6%	8%
Husband—When decedent died between July 1, 1965 and July 1, 1969.	$10,000.00	2%	4%	6%	8%
Husband—When decedent died on or after July 1, 1969.	$20,000.00	2%	4%	6%	8%
Husband—When decedent died on or after July 1, 1974.	$25,000.00	2%	4%	6%	8%
Minor Children of Decedent—When decedent died on or after July 1, 1969.	$5,000.00	2%	4%	6%	8%
Lineal ancestor or descendant, adopted child or lineal issue of adopted child.	$2,000.00	2%	4%	6%	8%
Brother or sister of descendant, son's wife or daughter's husband.	$500.00	4%	8%	12%	16%
Uncle, aunt or first cousin.	None	6%	12%	18%	24%
Any other degree of consanguinity, or a stranger in blood or body politic, or corporate.	None	8%	16%	24%	32%

Exemptions shown above apply only in estates located entirely within the State of Montana: where the property is located partly within and partly without Montana exemptions are apportioned as provided in Section 91-4421 R.C.M. 1947.

A son or daughter inheriting a $100,000 taxable share would pay $4,460 under current law.

Like 37 other states, Montana has in addition to its inheritance tax laws, an estate or "pick up" tax. This tax was imposed in 1927 to pick up the maximum amount allowed by the federal government as a state death tax credit. This tax is infrequently collected, since its rates preclude all but large estates. In an estate inherited by a spouse, the "pick up tax" would not apply on taxable shares less than $5,000,000. If four or five children inherited an estate, however, the tax could begin on an estate of $250,000.[8]

B

BEST COPY AVAILABLE

REVENUE

Although one of the avowed purposes of death taxes is to redistribute wealth from generation to generation, the taxes, most scholars agree, have not served this function. Nationally, the burden of federal estate taxes on large estates is lessened through the use of generation-skipping trusts, gifts before death, and estate-splitting. Even though the federal tax rate rises to 77% on taxable estates over $10 million, family fortunes have remained intact. A recent Urban Institute study found that 5% of the adult American population holds 34% of the total private wealth in the country.[9] State death taxes, with lower tax rates than the federal government, are similarly ineffective in breaking up large estates. The 1966 study of Montana taxation noted that the maximum rate of 8% "minimizes the ability of the Montana tax to achieve this goal, if it is desired."[10] Some scholars of the tax contend that death taxes are no longer designed to redistribute income.[11]

The more important purpose of death taxes, thus, is to produce revenue. Montana's inheritance taxes, as Table I shows, produce a steady, relatively constant amount of revenue which totals about 4% of the state's revenue.[12]

C

ADMINISTRATIVE AND COMPLIANCE COSTS

The administrative costs of inheritance tax to the Department of Revenue is less than 1% of the total tax collected. The cost to the counties is approximately equal. These costs have been reduced slightly in recent years. The 1966 Montana Taxation Task Force rated its costs "low" compared to the 2.1% for personal income taxes, 2.8% for most property taxes, and 9.9% for property taxation of motor vehicles.[13]

The amount Montana citizens pay to comply with the tax is difficult to calculate, since the services lawyers, accountants, and bank officials perform in closing estates include calculating federal estate taxes, discharging the decedent's obligations, and distributing the estate as well as dealing with inheritance taxes. However, a 1965 study estimated the compliance costs for inheritance tax and related matters at about 12% of the total tax collected. Compared to other types of taxes, this compliance cost is high. License taxes and most types of property tax average less than 1%. Only the compliance costs of personal income tax are higher according to the study.[14]

Inheritance taxes have been attacked in several states for the relatively high expenses for citizens and the relatively small amount of revenue generated. Many legislatures have recently adopted uniform probate codes in the hope that uniform and clear laws will decrease the need for attorneys' services. In particular, the Montana legislature in 1975 passed a bill which completely eliminated the need for attorneys or accountants in certain cases. Heirs to estates not requiring the appointment of a personal representative can allow the Department of Revenue to determine the amount of tax due.[15]

Whether these laws will lower compliance costs cannot be determined at present.

D

TAX INCIDENCE

At present, inheritance taxes touch most Montanans lightly and infrequently, if at all. 50% of all estates pay no taxes under present law. As Chart II shows, most heirs who do pay inheritance taxes pay small amounts: 75% of those paying the tax represent only 21% of the total tax paid. Estates valued at over $60,000 comprise only 25% of the total number paying taxes, but their transfer produces 79% of the total inheritance taxes.[16]

The percent of heirs paying inheritance tax has remained relatively constant during the past twenty years, varying from 40% to 50%. Data on the size of estates paying taxes in the past does not, however, exist.[17]

CHART I

INHERITANCE TAXES AS A SOURCE OF REVENUE

Year	Revenue Produced (000)	% of Total State Revenue
1965	$2,504	4.3
1966	2,750	4.3
1967	2,790	4.0
1968	2,976	3.7
1969	3,879	3.6
1970	4,233	4.5
1971	3,645	3.6
1972	4,234	3.3
1973	4,457	3.2
1974	5,660	3.4
1975	5,395	3.3
1976	6,180	3.7
1977	6,369	3.4

CHART II

PERCENT OF TOTAL INHERITANCE TAX PAID

BY VARYING SIZES OF ESTATES

Gross Value of Estate	Percent of Estate	Total Amount of Tax Owed	% of Total Tax Paid
Under $25,000	37%	$14,326.00	4%
$25,000-$60,000	38%	$66,923.00	17%
Over $60,000	25%	$316,364.00	79%
Total	100%	$397,613.00	100%

Charts compiled from returns for August 1974; 191 cases which paid 1/12 of total inheritance tax for the year.
Chart II was compiled by Inheritance Tax Division.

IV

CONCERN ABOUT FEDERAL ESTATE TAXES AND STATE INHERITANCE TAXES

Inheritance and estate taxes have received wide publicity during the past two years. Inflation -- particularly the rise in land prices -- coupled with the fact that the exemptions allowed relatives have not changed in decades has led many people to press for tax reform.

Over 150 bills to increase estate tax exemptions, provide for an alternate means of valuation, and increase the period of payment were introduced in Congress this session. In September the Tax Reform Act of 1976 was passed and signed into law, which increased exemptions, allowed valuation for tax purposes of farm and business property on current use rather than market value, allowed fifteen years for the payment of estate taxes, and imposed taxes on generation-skipping trusts over $250,000.

Citizens in 42 states have called for increased exemptions in their states' death taxes. The movements in Nebraska, South Dakota, and other rural states are particularly active. In March, 1976, Minnesota's legislature passed a bill which doubled exemptions and allowed deferred payment of the tax.[18]

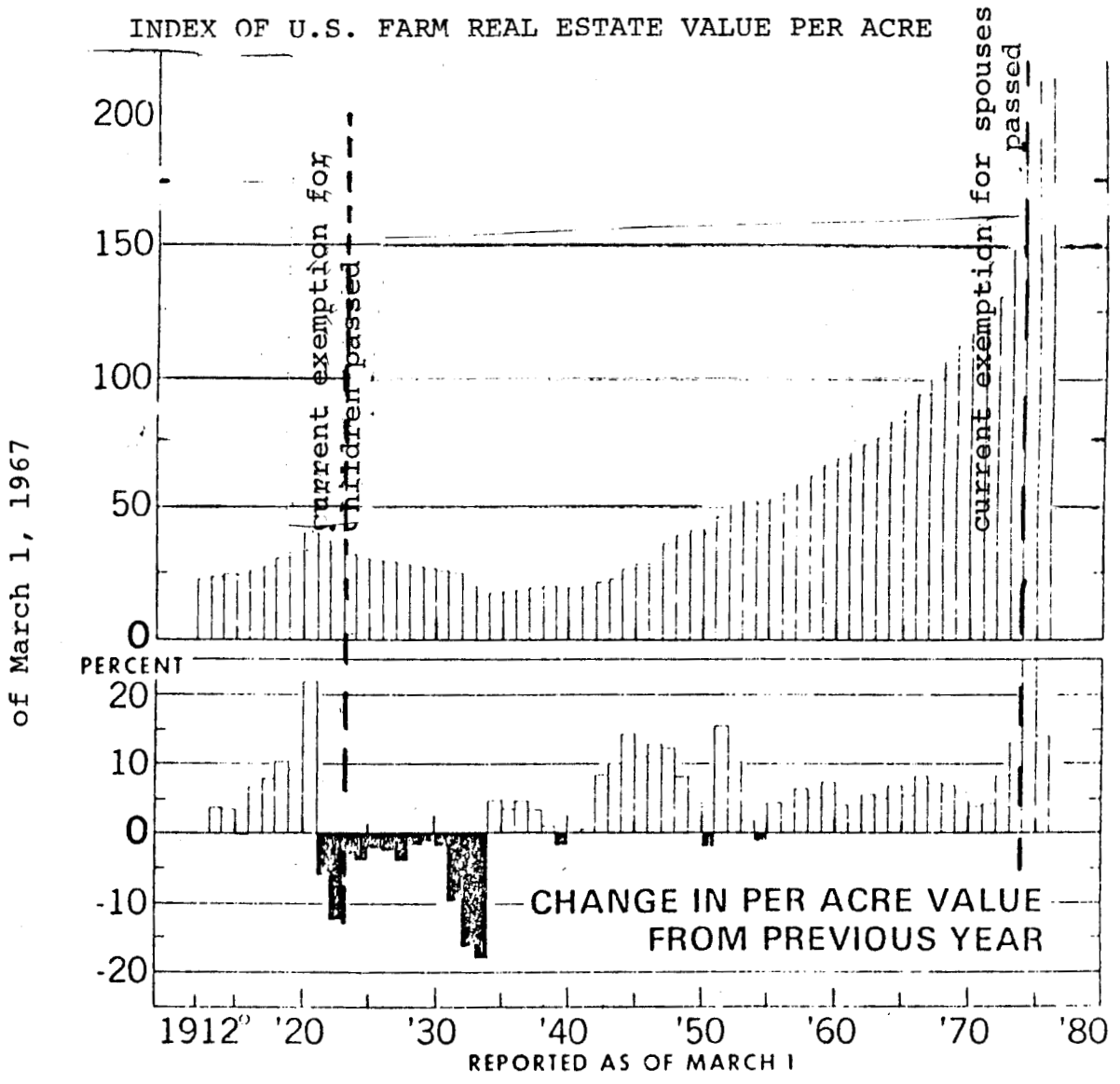
Montana citizens have expressed similar concerns as in other states. The exemption allowed adult children inheriting an estate has not increased since 1921. Inflation, as measured by the consumer price index, has increased the cost of commodities an average 300%. All evidence suggests that the value of estates has kept pace with these increases.[19]

This rapid increase is particularly noticeable in farm estates. According to U. S. Department of Agriculture statistics, the average value for the land and buildings on a Montana farm or ranch in 1955 was $77,000, in 1969 $150,000. Today the average value is close to $250,000. During these same years, the value of farm implements and machinery has increased 103%. Chart III illustrates the rise in farm real estate values since 1923 when the $2,000 exemption for adult children was established.[20]

Many farmers and ranchers have become concerned that their children will not be able to pay estate and inheritance taxes and have enough capital to keep the concern afloat. The U. S. D. A. estimates that 70% to 90% of farm estates are fixed in land and buildings, with few liquid assets.[21]

Montana's businesses may have experienced a similar rise in value during the same period, but census data is sparse for this sector of the economy. The majority of Montana retail,

CHART III



Source: USDA, Farm Real Estate Market Developments (January 1976); Montana Dept. of Agriculture.

NUMBER OF FARMS AND LAND IN FARMS, MONTANA 1962-1976

Year	Farms	Land in farms	Average size of farms
	Thousands	Thousand acres	Acres
1962	30.1	66,800	2,219
1963	29.5	66,800	2,264
1964	28.9	67,200	2,325
1965	28.4	66,700	2,349
1966	28.0	66,200	2,364
1967	27.6	65,700	2,380
1968	27.1	65,200	2,406
1969	26.7	64,700	2,423
1970	26.4	64,200	2,432
1971	26.0	63,700	2,450
1972	25.5	63,200	2,478
1973	25.1	62,700	2,498
1974	24.6	62,500	2,541
1975	23.5	62,400	2,655
1976	22.5	62,400	2,773

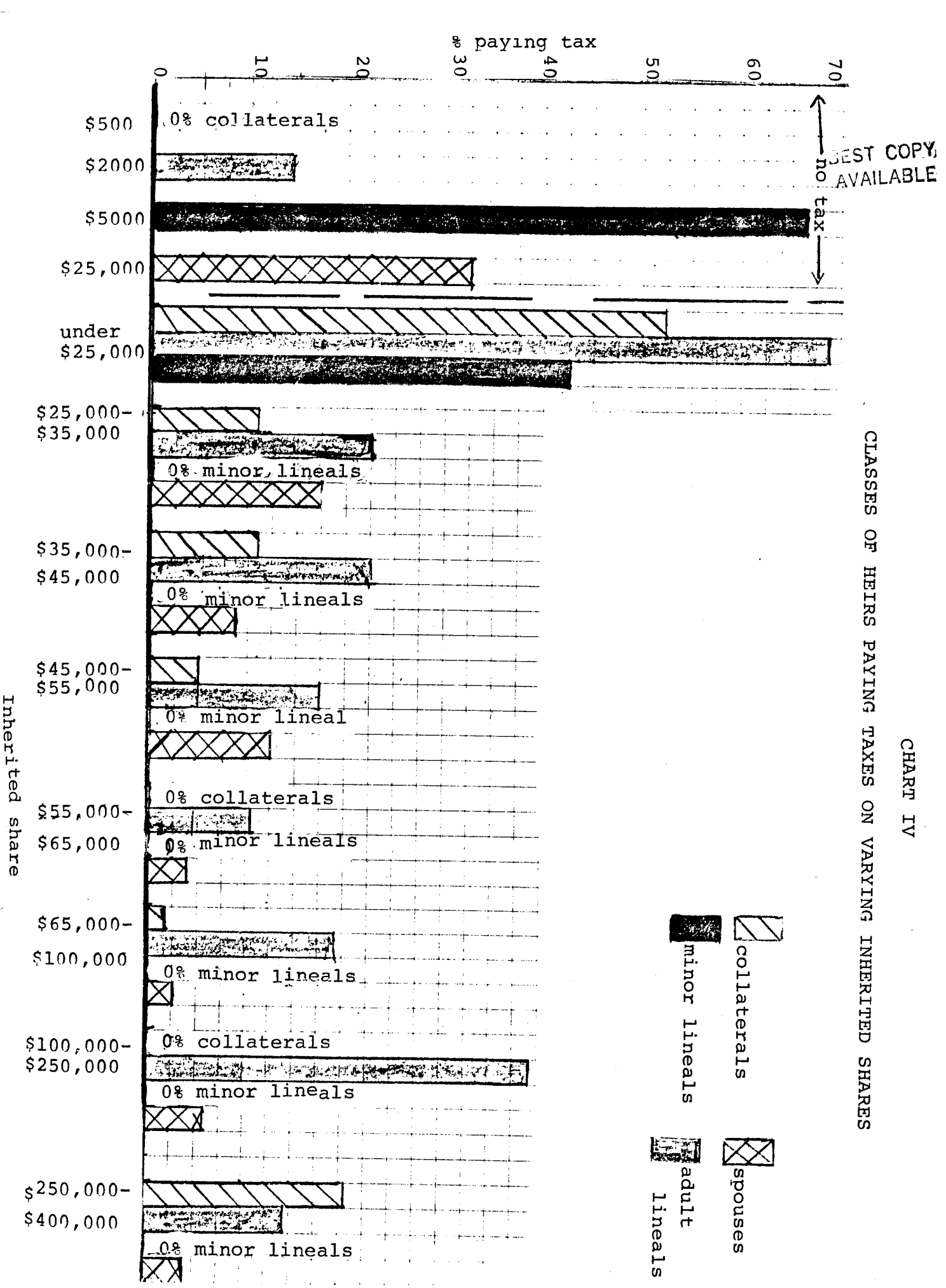
BEST COPY AVAILABLE

wholesale, and service businesses are family owned: 60% in 1969 were family proprietorships, 7% partnerships, and 33% corporations. Heirs inheriting family businesses may find state inheritance taxes as burdensome as heirs to farms during the next two decades.

Chart IV shows that adult children, whose exemption under current law is $2,000, inherit property more frequently than do spouses, whose exemption is $25,000. This is particularly true in estates distributing more than $65,000 to heirs. This data suggests that adult children are the most frequent heirs to family farms and businesses, yet their exemption is less than 1/12 that of spouses.[22]

To determine what effect inheritance taxes had upon small family businesses and farms, the subcommittee contacted the Montana Chamber of Commerce, Montana Hardware and Implement Association, Montana Tavern Association, Montana Farmer's Union, Montana Stockgrowers' Association, and the Montana Cattlemen's Association, as well as numerous attorneys, bank officers, and farm auctioneers. Each organization was asked whether, in its experience, family farms or businesses had to be sold to pay state inheritance taxes. In no case did the responding organization know of such a sale.[23] This finding seems to bear out the survey of 600 businesses and farms conducted by the Montana Tax Task Force in 1966. Less than 10% of those responding felt that inheritance taxes affected their operation or business decisions.[24]

Significantly, however, 70% of those who said in 1966 that inheritance taxes did affect their business decisions were farmers and ranchers. Many of the organizations answering the subcommittee's 1976 survey said that inheritance taxes had not caused the sale of family farms in the past but that they fully expected such forced sales to occur in the future. Two factors caused this change. Most important was the sharp rise in land prices in 1975 and 1976. These yearly increases, at over five times the average annual increase during the past two decades, coupled with the increasing mortgages carried by farms, will make estate and inheritance taxes the "last straw," in the opinion of one attorney handling farm and ranch estates. Statewide, bank officials note a "marked increase" in short-term borrowing by all ranchers and farmers and long-term debt growing, even among larger units which "historically have been free of debt." Most family farms and ranches are at present forced to borrow money to pay death taxes, the responding organizations noted. If the concern is already mortgaged to capacity, refinancing to pay the taxes may be impossible.[25]


% paying tax
0
10
20
30
40
50
60
70
BEST COPY AVAILABLE
no tax
$500
0% collaterals
$2000
$5000
$25,000
under $25,000
$25,000-$35,000
0% minor lineals
$35,000-$45,000
0% minor lineals
$45,000-$55,000
0% minor lineal
0% collaterals
$55,000-$65,000
0% minor lineals
$65,000-$100,000
0% minor lineals
$100,000-$250,000
0% collaterals
0% minor lineals
$250,000-$400,000
0% minor lineals
Inherited share
CLASSES OF HEIRS PAYING TAXES ON VARYING INHERITED SHARES
CHART IV
collaterals
minor lineals
spouses
adult lineals

Since the average age of Montana farm and ranch operations is 50 years, the effect of inheritance taxes on estates with rapidly increasing value and few liquid assets will be felt in the next ten to twenty years.[26]

V

ALTERNATIVES

In its study of ways to alleviate potential and existing problems caused by inheritance taxes, the subcommittee considered a great variety of alternatives. These alternatives are discussed in the following pages, with arguments for and against each proposal.

ESTATE TAXES

Estate taxes differ from inheritance taxes in that they tax the privilege of transferring property at death. Inheritance taxes tax the privilege of receiving property. Thus, the estate pays an estate tax, while the heirs pay inheritance tax.

Estate taxes are generally accepted as easier to administer than inheritance taxes and superior revenue producers. An estate tax is usually determined by multiplying the taxable estate by the tax rate; the computation does not depend on the number of heirs, their relationship to the decedent, or the amounts each heir receives as inheritance taxes do. Since the rate is applied against the whole estate, the amount of revenue produced is greater than when the smaller amounts received by each heir are taxed.

Critics of estate tax argue that since any death tax is, in reality, subtracted from the estate, it is more equitable to tax each heir on the amount he actually receives rather than tax the larger, undivided estate. Inheritance taxes, its supporters maintain, also recognize familial ties in that it gives larger exemptions to close relatives.[27]

The subcommittee discussed three bills to replace Montana's inheritance tax with different types of estate taxes:

A. Estate tax limited to federal credit. As noted on page 4, section 91-4411, R.C.M. 1947, provides for a "pick up" tax, which allows Montana to collect the credit given by the federal government for state death taxes. This tax applies only to estates large enough to pay federal taxes in excess of $5,000.[28] As only 5% of all estates pay any federal income tax at all, the number of Montana estates paying the "pick up" tax is very small. The number may become even smaller under the Tax Reform Act of 1976, which allows larger exemptions and tax credits.

The subcommittee considered a bill to repeal existing inheritance taxes, retaining only the "pick up" or estate tax. The arguments for and against the change are sketched below.

ARGUMENTS PRO

Changing from an inheritance tax to this form of estate tax would greatly reduce filing procedures and tax computations. It would decrease the costs of calculating the tax and reduce the amount of court work.

An estate tax based upon the federal credit would:

(1) require no taxes over the federal estate tax;

(2) provide the greatest tax relief while maintaining the state's share of estate taxes;

(3) utilize to the fullest extent federal exemptions and deductions;

(4) remove the necessity of tax computation from approximately 2,300 estates per year;

(5) provide the full effect of the Uniform Probate Code for small estates; and

(6) require the least change in existing law.

ARGUMENTS CON

Any change from the existing tax system, including this change to collection of the federal credit, would:

(1) cause hardship to those who have probate plans based on the existing law;

(2) change existing law with regard to death taxation of joint interests, life insurance, and annuities; and

(3) decrease revenue produced by over 80%.

B. Estate tax based on federal taxable estate. Secondly, the subcommittee considered a bill to use the federal taxable estate as a basis for computing state death taxes. The Montana taxable estate would be determined by subtracting the federal estate taxes paid from the federal taxable estate. A tax rate of 2% would be applied against the first $30,000 of the resulting figure, increasing to 20% of any estate over $1.5 million. Once again, only estates subject to federal estate taxes would pay this state tax.

ARGUMENTS PRO

Changing from an inheritance tax to this form of estate tax would reduce filing procedures and tax computations, decrease costs of determining the tax and, in conjunction with the probate code, reduce court work.

An estate tax based on the federal taxable estate would:

(1) provide tax relief to many residents;

(2) provide the $60,000 exemption utilized by the federal government;

(3) remove the necessity of filing forms for approximately 2,300 estates per year;

(4) provide the full effect of the Uniform Probate Code for small estates;

(5) provide a credit for transfers within the last five years;

(6) allow the state to collect its share of the federal credit; and

(7) provide, in the rate structure, a means of increasing or decreasing state revenue as needed.

ARGUMENTS CON

To change from an inheritance tax to this form of an estate tax, or any estate tax, would:

(1) change existing law with regard to joint interests, life insurance, and some annuities;

(2) decrease the revenue available to the state by about 70%, under the rates discussed in the bill;

(3) not necessarily provide fewer forms or procedures in conjunction with the Uniform Probate Code; and

(4) require the same administrative personnel at the state level.

C. Estate tax modeled on the federal estate tax. The third type of estate tax the subcommittee considered was modeled on the federal estate tax. The methods of determining federal gross estate, joint interests, powers of appointment, and related matters would be identical with federal law. The

only differences would be the starting point of the taxation and its rate. For discussion purposes, $60,000 was used as a starting point and tax rates of 2% on taxable estates to $25,000, increasing to 14% on taxable net estates over $1,000,000.

ARGUMENTS PRO

Utilizing a copy of the federal estate tax would:

(1) assure consistent treatment of the same property for federal and state purposes;

(2) make available the exemptions and deductions in the federal estate tax; and

(3) assuming current revenue is still produced, create greater distribution of wealth while allowing the state to adjust the rate structure to meet current revenue needs.

ARGUMENTS CON

Changing to this form of estate tax would:

(1) increase the costs of administering estates;

(2) provide the state with limited control over the course of death tax legislation;

(3) change existing law with regard to joint interests, life insurance, and annuities;

(4) increase the number of forms and procedures required to probate an estate; and

(5) require periodic amendments to keep up with federal changes.

AMENDMENTS TO EXISTING INHERITANCE TAX LAWS

The subcommittee also considered various amendments to the inheritance tax system now in existence.

A. Larger exemptions.

The subcommittee discussed three alternate exemption schedules to ease the tax burden for small estates.

Higher schedules would lower tax revenue by the following amounts:

Alternate Schedules (000's) spouse, minor child, adult child				Annual Estimated Loss	Percent Loss of Existing Tax
#1	$30	$10	$5	$1,000,000	-17.6%
#2	$35	$12	$6	$1,160,000	-20.4%
#3	$40	$15	$7	$1,300,000	-22.9%

However, higher exemption schedules would eliminate inheritance taxes for nearly 70% of all estates. Since most estates are divided among multiple heirs, higher exemptions would cover heirs' shares in estates of $40,000 or less.

B. Deferred payment.

At present, inheritance taxes are due 18 months after death. A discount of 5% is allowed if the taxes are paid before this date. The subcommittee requested that information be gathered on the effects of allowing installment payment of inheritance taxes on a family farm or business over a period of years as in federal law. A moderate interest rate would be charged on the taxes due.

Many national studies of death tax agree that a longer payment period mitigates many of the hardships caused by inheritance taxes. Since most heirs to farms and ranches must borrow money to pay death taxes at interest rates of 10% or higher, a provision for extended payment with a 6% interest rate could be very beneficial.[29]

Members of the Montana Uniform Probate Code Committee pointed out, however, that deferred payments could cause problems for both the Department of Revenue and heirs. The Department would have the obligation to determine which heirs were eligible for the provision, would have increased accounting, and would need to remain in contact with the heir or personal representative of the estate during the period of payment. Enforcing a lien against the property over the extended period would be difficult if the property is divided among many heirs. These complications would probably require extra administrative staff. Moreover, heirs inheriting corporate stocks or real estate, who would be ineligible for the provision if the assets were not a family business, could argue that they were discriminated against.[30]

The subcommittee discovered that the number of Montana heirs using installment payments for federal estate taxes has been low. The requirement that bond for the amount of tax be posted seems to discourage its use, as does an IRS code that the estate's administrator is personally liable for the tax over the entire period of payment.[31]

C. Lowering Bond Requirements.

While investigating the effects of deferred payment and tax liens and bonds made necessary by this amendment, the subcommittee discussed section 91-4419, which requires the personal representatives of minor heirs choosing to defer inheritance taxes until the age of majority to file a penalty bond for three times the amount of taxes due. At present, the cost of a bond for deferred inheritance taxes is 1.5% of the total amount due, renewable every three years. Thus, the bond for deferring $10,000 in inheritance taxes twelve years would be $1,800.[32]

Recognizing that section 91-4415 imposes a lien on all property on which inheritance taxes are due, the subcommittee considered a proposal to require bond on only that property against which a lien is unenforceable. The subcommittee learned, however, that bonding companies are reluctant to write this type of bond.

Surety bonds for inheritance taxes require collateral, usually in the form of a lien upon the property on which the tax is due. Bonding companies argue that if the state cannot enforce a lien against certain property, the bonding company faces the same problem. In such cases, they call the bond a financial guarantee bond rather than a surety bond, because it lacks adequate collateral. Most heirs would have difficulty qualifying for a financial guarantee bond. Moreover, Section 91A-3-603 of the Montana Uniform Probate Code removed the necessity in most cases for the administrator or executor (now called personal representatives) of an estate to file a bond with the state. This replaced section 91-1702 that required such persons to file, at the court's discretion, a bond for the value of the estate until the taxes were paid. The intent of this change was:

> "that the court and registrar are [no longer] responsible for seeing that personal representatives perform as they are supposed to perform. Rather, performance is coerced by the remedies available to interested persons."

Bonding companies say that the proposed amendment coupled with the present language in 91A-3-603 would make their position very difficult. They feel that they would have little recourse or chance of recovery if an heir or personal administrator defaulted on tax payment.

Another difficulty caused by an amendment requiring bond only for certain types of property is that currently the inheritance tax for the transfer of an individual piece of property is not computed separately. The tax is calculated for the transfer

32

of the distributive share as a whole. At least one additional section setting down a procedure for separating the taxes on the transfer of property would be necessary if the amendment were passed.[33]

The subcommittee then rewrote the amendment to require bond for the inheritance taxes due on the transfer of all property, but only for the amount of the tax. This amendment would reduce the bond on $10,000 of tax deferred twelve years to $600. Since default on bonds for death taxes has never occurred in Montana on either the state or federal level, this risk to the state in lowering the size of the bond seems slight.[34]

D. Alternate Methods of Valuing Property.

The subcommittee also considered a bill changing the method of valuing agricultural land. At present, Montana's inheritance tax laws and federal estate tax laws require that all property be valued for tax purposes at its "clear market value." Farmland on the edge of growing cities must, therefore, be valued as residential lots rather than as crop or grazing land. The high value of such land in an estate makes inheritance taxes higher and may encourage the heir to develop rather than farm it.

The subcommittee examined a bill allowing the valuation of agricultural land on its productive use. In the bill, "agricultural land" was required to meet the same qualifications as exist in property taxation.

Congressional supporters of this concept maintain that this provision would be helpful in keeping farmland in families and simple to administer. County assessors' property tax rolls already contain assessments of the productive use of all agricultural land. The federal Tax Reform Act of 1976 authorizes the valuation of agricultural land at productive capacity.

Critics brand the proposal discriminatory, maintaining that small businesses do not benefit from this proposal. They predict that wealthy individuals would buy farms in order to pass more wealth to their heirs. They also point out that the state has no guarantee that heirs, having paid lower inheritance taxes on the agricultural land, will not sell it as residential or commercial property and make a large profit.[35] Lastly, the change in valuation from market value to productive capacity would cost the state approximately $1.8 million in revenue.[36]

In discussing the fiscal impact of amendments to inheritance tax laws, a note of explanation is necessary. New statutes

affect the estates of only those dying after the effective date of the bill. Since inheritance taxes are not due for 18 months after the death, the fiscal impact of the bill will be delayed almost two years. If the value of estates continues to keep pace with inflation, any predicted drop in revenue may not, in fact, occur or would be lessened because of this delay.[37]

VI

SUBCOMMITTEE DELIBERATIONS

At its final meeting on October 1, 1976, the subcommittee voted 5-2 (one member absent)* to recommend a bill to the legislature which

(1) raised the exemptions for surviving spouses to $40,000, to $15,000 for minor lineals, to $7,000 for adult lineals, and $1,000 to brothers or sisters or sons- and daughters-in-law;

(2) allowed the first $25,000 of value over the exemption to be taxed at the primary rate; and

(3) lowered the bond required for personal representatives of minor heirs choosing to defer taxes.

This bill appears in Appendix A.

The subcommittee reached this decision after detailed consideration of the proposed alternatives at the preceding four meetings. Estate taxes were seriously considered at the first two meetings because they eliminated taxes for small and medium-sized estates. Members finally rejected the alternative at the November 23 meeting on the grounds that it would involve a major legislative change which could, in fact, be achieved merely by raising the exemptions in existing inheritance tax law.

At the final two meetings, the subcommittee discussed various drafts amending the inheritance tax sections. The advice of the Inheritance Tax Division and the State Bar Association was sought and discussed. The subcommittee also received the testimony of concerned ranchers and farmers. Members early chose an option which increased exemptions dramatically to reflect the rise in the value of estates caused by inflation. The subcommittee also accepted the Inheritance Tax Division suggestion that the exemption be removed from the first $25,000 of the taxable estate subject to the primary rate, thereby lowering the total tax.

---

*For: Senators Watt and Norman and Representatives Fagg, Williams, Yardley. Against: Senator Mathers and Representative Fabrega. Absent: Senator Aber.

Deferred payments were included in several drafts of the subcommittee's bill because this provision seemed to offer tax relief to heirs to family farms and businesses with few liquid assets. The subcommittee decided, however, to reject the alternative on the advice of the Montana Uniform Probate Code Committee. That committee pointed out the numerous legal conflicts, possible constitutional questions, and administrative difficulties caused by the provision. The subcommittee considered the fact that few Montana heirs take advantage of the federal installment payments and decided that the problems created outweighed the advantages.

In discussing deferred payments, the subcommittee considered the subject of bonds required for deferred taxes in minor's inheritances and determined that the bond required was too high. It voted to require bond only for the amount of tax due, not for three times that amount.

Before taking a final vote on the bill, the subcommittee submitted the draft to both the Uniform Probate Code Committee and the Inheritance Tax Division for comments on the language of the bill and any possible conflicts with the Uniform Probate Code. Their suggestions were accepted at the October 1 meeting.

VII

MINORITY REPORT

During its study, the Subcommittee was presented with evidence showing that: (1) state inheritance taxes are becoming a serious burden for family farms; (2) that the inheritance tax system is unnecessarily complicated and conflicts appear in several sections of the law; and (3) that the money produced by the tax is a minor source of revenue for the state.

The Subcommittee had the opportunity to adopt a bill reducing the tax burden and simplifying the tax procedure. Members voted, however, only to raise exemptions so slightly that few heirs benefit and to retain the present antiquated tax system virtually intact.

In particular, the $7,000 exemption allowed to adult children under the Subcommittee proposal does nothing to alleviate tax problems facing sons and daughters inheriting family farms. Under the Subcommittee's bill, state inheritance taxes may become heavier for these heirs than federal estate taxes, since the federal Tax Reform Act of 1976 doubled tax credits and allowed family farms and businesses to be valued at productive capacity rather than at market value.

We believe, therefore, that the Subcommittee should have used its opportunity to repeal the entire inheritance tax system and tax only the credit allowed by the Internal Revenue Service to heirs paying substantial amounts of federal estate tax, as is now done under Section 91-4411. A bill embodying these changes appears in Appendix B.

The major effects of this bill would be to:

(1) eliminate any state death taxes for over 90% of all Montana heirs;

(2) remove the burden of state death taxes for most family farms and businesses;

(3) tax only very large estates;

(4) lower the administrative costs of death taxes; and

(5) lower state revenue by about $5,000,000 a year.*

---

* The exact figures on the size of estates taxes and the revenue loss were not available at the time of writing, since the federal regulations governing the Tax Reform Act of 1976 had not yet been adopted.

The existing "pickup" tax, as the tax on state credit is called, was enacted by the Montana legislature in 1933 to collect the maximum amount of credit allowed by the federal government for state death taxes. This tax does not increase the amount heirs pay in any way. If a state does not have a "pickup" tax, the federal government disallows the tax credit and, thus, collects additional taxes for the amount that would have been paid to the state. The only effect of the state provision is to insure that the extra amount is paid to the state government rather than the federal.

The "pickup" tax is only collected on very large estates -- those paying substantial amounts of federal tax. The Federal Tax Reform Act of 1976 established a series of tax credits that exempt over 90% of Montana estates from any federal tax. Estates passing to adult children must be in excess of $120,667 after allowable deductions to pay any federal tax, and this lower limit will increase to $175,625 by 1981. Spouses inheriting estates are allowed $250,000 of the value of the estate tax-free. Heirs to family farms and businesses may reduce their taxable value up to $500,000 by valuing the estate on its productive capacity rather than its market value. Very few Montana heirs, thus, would pay any "pickup" tax.

The repeal of existing inheritance tax laws would greatly reduce both the administrative and compliance costs of death taxes. Since the Internal Revenue Service calculates the amount of credit given a state, the Department of Revenue would need fewer employees to oversee the collection of the "pickup" tax. County courthouses would also be freed of some of the details of probate. Heirs would less frequently need the assistance of attorneys and accountants to close an estate.

In relieving heirs of the burden of inheritance taxes, Bill B would, of course, reduce revenue from death taxes significantly -- by about 85% in 1979, rising to 90% by 1983. This would be a revenue loss of approximately $5,100,000 a year. This loss may, however, be balanced against the declining importance of inheritance tax to the state's revenue: in 1970, the tax produced 4.5% of the state's revenue but only 3.6% in the current year. By 1979, this percentage, if the law is unchanged, may be down to 3.0%. Revenue raised from new sources such as the coal tax diminish the impact of this loss in revenue.

In conclusion, the advantages to Montana citizens by the elimination of inheritance taxes far outweighs the loss of revenue.

Senator William L. Mathers

Representative W. Jay Fabrega

VIII

FOOTNOTES

[1]Eugene Oakes, "Development of American State Death Taxes" in the Iowa Law Review, Vol. 26, 1941, pp. 450-480. Business Research Bureau, Death Taxation in the American States (University of South Dakota: 1974), pp. 1, 78-80.

[2]Dr. Layton Thompson, "The Montana Tax System -- Some Historical Highlights" in Montana Tax Study Working Papers, part III, Section C, p. c1. Oakes, pp. 457-8n. Chapter , S.L. 1897. Gelsthorpe v. Furnell 20 Mont. 299 (1897), In re Tuohy's Estate 35 Mont. 431 (1907).

[3]Oakes, pp. 468.

[4]Douglas Jerome Wold, "The Montana Death Taxes" (George Washington University, unpublished Masters of Law thesis: 1969), p. 7.

[5]Thompson, pp. C4-5, C-12-13.

[6]The 1921 act, due to legislative oversight, failed to tax transfers to children over $25,000. In 1923 the legislature repealed the act and substituted another which had the same structure but included a tax rate for transfers to lineals over $25,000. In passing the new act, the legislature increased the widow's exemption to $17,500, a husband's to $5,000, and kept the exemption for lineals at $2,000. Wold, pp. 7-8.

[7]State Board of Equalization, Biennial Report, 1930-1932, p. 4.

[8]Wold, pp. 137-144. Information from Thomas Stoll, Chief, Inheritance Tax Division, Department of Revenue, 18 October 1976.

[9]Quoted in the Washington Post, 15 March 1976.

[10]John H. Wicks, "Economic Analysis of Montana's Tax Structure" in Tax Study Task Force Working Papers, part VI, p. 22.

[11]Carl S. Shoup, Federal Estate and Gift Taxes (Washington: Brookings Institution: 1966).

[12]Calculations and predictions involving inheritance taxes must necessarily be imprecise: the taxes from a single very large estate can make averages meaningless.

[13]Information from Thomas Stoll, 24 October 1975. Michael Killworth and John Wicks, "The Compliance and Administrative Costs of Montana Taxes" in Tax Task Force Working Papers (1966), Appendix 7, p. 28.

[14]Ibid., pp. 28-30.

[15]HB 372, Chapter 424, S.L. 1975.

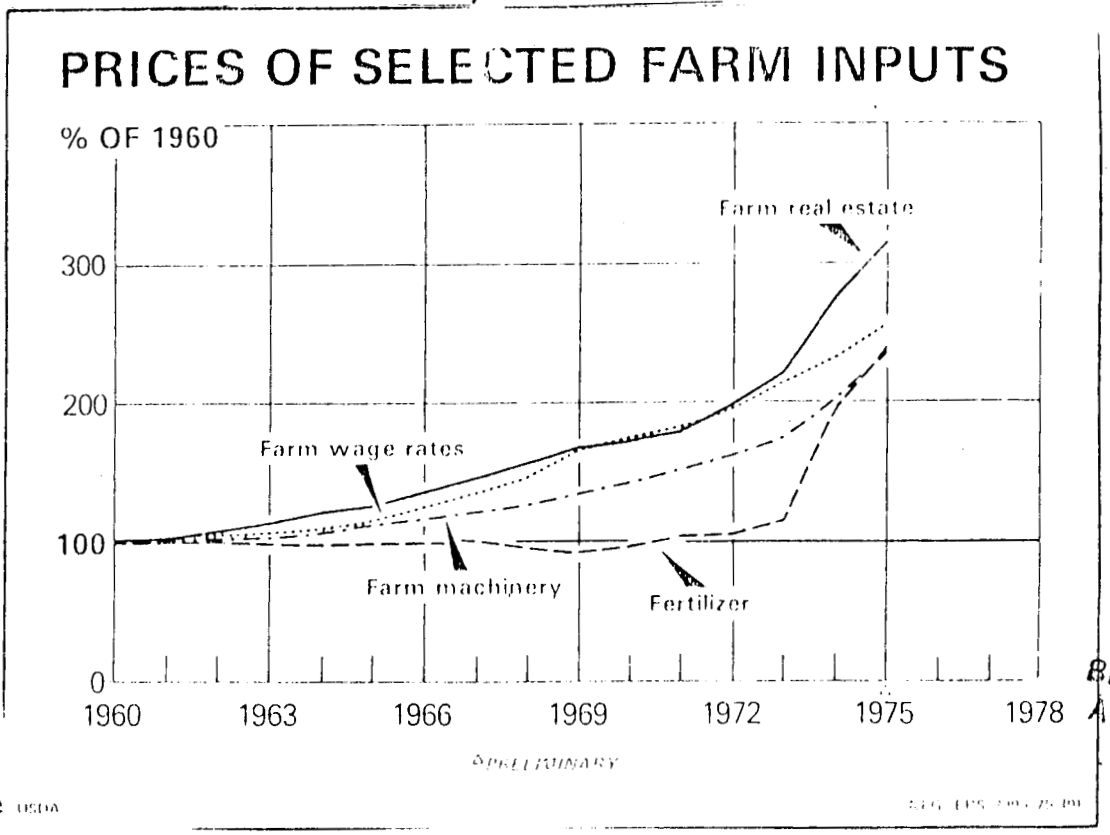
[16]Information from Tom Stoll, 15 March 1976. This information was compiled from the returns of August 1974 - 191 cases that paid 1/12 of the total inheritance taxes of that year.

[17]Wold, p. 158. Wold's thesis contains the only statistical analysis of Montana's inheritance taxes ever made. He notes the "paucity of available statistics with which to conduct such a study" (p. 146). The lack of such statistics, complete with historical data, hampered this study, also.

[18]Great Falls Tribune, 16 February 1976, Minnesota Agriculture, 8 April 1976.

[19]The Handbook of Basic Economic Statistics, Vol. XXX, No. 1 (Washington: Economic Statistics Bureau: January 1976), pp. 101-102.

[20]U. S. Department of Commerce, Statistical Abstract of the United States, 1974, p. 601. U. S. Department of Agriculture, Farm Real Estate Market Developments, February 1976, p. 3. U.S.D.A. Farm Prices, 1975.



BEST COPY AVAILABLE

the USDA

[21]Information from Thomas Dundas, Jr., Assistant Administrator, Research and Information System Division, Department of Community Affairs. Since 1972, agricultural land prices have been climbing more rapidly than commercial land prices in Montana. U. S. Department of Commerce, 1972 Census of Selected Service Industries, 1972 Census of Wholesale Businesses, 1972 Census of Retail Businesses.

[22]I compiled this chart from the sample of 191 estates used as the basis of all predictions in this study. Since estates may be left to several children, but only one spouse, the children may claim more than one $2,000 exemption.

[23]The responses to this question are on file at the Legislative Council.

[24]John Wicks et al, "Effect of Montana Taxes on Decisions of Business Firms" in Tax Task Force Working Papers (1966), Appendix 5, pp. 5-7.

[25]Letter from Crowley, Kilbourne, Haughey, Hanson & Gallagher, 1 October 1975.

[26]U. S. Department of Commerce, 1972 Census of Agriculture.

[27]Wold, pp. 2-5.

[28]Information from Thomas Stoll.

[29]North Central Regional Extension Service, Death and Taxes, September 1975, pp. 10, 15. U. S. Department of Agriculture, Economic Research Service, "Increasing Impact of Federal Estate and Gift Taxes on the Farm Sector," Report No. 242. Congressional Research Service, Federal Estate and Gift Taxes, 1974, pp. 50-51. Lawyers and bank trust officers in Montana, replying to a query on possible reforms of inheritance tax, agreed.

[30]Letter from Uniform Probate Code Committee to the Subcommittee on Taxation, 14 September 1976.

[31]Information from Robert Wompler, Attorney, Internal Revenue Service. 17 February 1976. Federal Codes Annotated, Title 26, Section 6161.

[32]Information from Joanne Gross, Jensen Insurance Company, 27/5/76, and Gordon Buckland, Buckland Agencies, 25/5/76 and 26/5/76.

[33]Interview on 27/5/76 with Gene MacDonald, Underwriting Department, and Attorneys of the Western Surety Company, South Dakota, the company which underwrites most of the bonds for Montana. He and his staff pointed out the difficulties discussed. Section 91A-3-605 does provide that interested persons having a claim of over $1,000 may require bond from personal representatives, but this section contains other qualifications. Editorial Board Comment to section 91A-3-603 by Allen Smith and Company.

[34]Information from Robert Wompler, 17 February 1976, and Thomas Stoll, 15 March 1976.

[35]Section 91-4407, R.C.M. 1947. In re Estate of Power, 156 M 100, the court defined clear market value as the "net value in the open market as determined by the price a willing but not obligated buyer would pay and a willing but not obligated seller would accept, with both parties knowing all pertinent facts affecting value." These arguments are abstracted from a variety of sources including Death and Taxes, pp. 7-8; Federal Estate and Gift Taxes, pp. 52-53; "Increasing Impact of Federal Estate and Gift Taxes on the Farm Sector," passim. Death Tax Policy, pp. 10-15.

[36]Letter from John Clark, Administrator, Research Division, Revenue Department, 25 March 1976.

Page 24 is blank

IX

SELECTED BIBLIOGRAPHY

Advisory Commission on Intergovernmental Relations, The Value-Added Tax and Alternative Sources of Federal Revenue, August, 1973, pp. 62-71.

Agricultural Experimental Station, Estate Planning, (University of Arkansas: 1972).

Boehlje, Michael D., "Current Regulations and Proposed Changes [in federal estate taxes]" in State Government, Spring 1976, pp. 108-114.

Business Research Bureau, Death Taxation in the American States (University of South Dakota: 1974).

Congressional Research Service, Federal Estate and Gift Taxes, 1974.

Hady, Thomas, "Impact of the State and Inheritance Taxes on the Farm Enterprise" in Agricultural Finance Review, June, 1963.

Indiana Commission on State Tax, Death Taxation, (1966).

Levi, Donald R. and Bruce Florea, "Estate Planning for Washington Farmers" published by Washington Farm Extension Bureau, (n.d.).

Montana Tax Task Force, "Working Papers," 1966.

North Central Regional Extension Service, Death and Taxes, Policy Issues Affecting Farm Property Transfers, (University of Illinois: 1975).

Oakes, Eugene, "Development of American State Death Taxes" in Iowa Law Review, 1941, pp. 451-478.

Smith, Dan Throop, "Impact of Federal Estate and Gift Taxes" in Tax Review, 7 May 1976, pp. 17-20.

Stuart, R. Wallace, "Small Business: Its Problems and Proposals for Relief Through Tax Reform" in University of Cincinnati Law Review.

U.S.D.A., Increasing Impact of Federal Estate and Gift Taxes on the Farm Sector, Agricultural Economic Report, No. 242.

------, Farm Real Estate Market Developments, Economic Research Service, Supplement No. 1 to CD-80.

Wold, Douglas Jerome, "The Montana Death Taxes" (George Washington University, Unpublished Master of Law thesis: 1969).

Woods, W. Fred, "Death Tax Policy: Implications for Rural Land-Use" presented to Conference on Rural Land-Use Policy in the Northeast at Atlantic City, New Jersey, 3 October 1974.

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND UPDATE THE MONTANA INHERITANCE TAX WITH REGARD TO JOINT ESTATES AND EXEMPTIONS; AMENDING SECTIONS 91-4405, 91-4409, 91-4410, 91-4414, 91-4416, 91-4419, AND 91-4453, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 91-4405, R.C.M. 1947, is amended to read as follows:

"91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property. Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, is inscribed in ~~co-ownership~~ coownership form, ~~or~~ held by two or more persons in joint tenancy ~~by--two--or--more--persons,~~ or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer. The tax is upon the transfer of ~~decedent's interest, one-half or other proper fraction, as evidenced by the written instrument~~

~~creating--the--same--as--though--the--property-to-which-the transfer-relates-belonged-to-the-joint-tenants--tenants--by the--entirety--joint--depositors--holders--in-co-ownership form--or-persons-as-tenants-in-common-and--had--been--for inheritance--tax--purposes--bequeathed--or--devised--to-the survivor-or-survivors-by-will-except-such-part--thereof--as may-be-shown-to-have-originally-belonged-to-the-survivor-and never--to--have--belonged-to-the-decedent~~ the full value of the property, except that portion originally owned by the survivor.~~This--section--shall--not-be-construed-to-repeal-or modify-the-provisions-of-section-91-4402.~~"

Section 2. Section 91-4409, R.C.M. 1947, is amended to read as follows:

"91-4409. Primary rates, where remaining amount not in excess of $25,000.00. ~~When-the-property--or--any--beneficial interest--therein-passes-by-any-such-transfer-to-any-person institution--association--corporation-or-body-politic--where the-amount--of--the--property--shall--exceed--in--value--the exemption--hereinafter--specified--and--shall-not-exceed-in value-twenty-five-thousand--dollars--($25,000.00)--the--tax hereby--imposed--shall-be:~~ The exemptions allowed by 91-4414 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution, association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value

45

of the remaining amount of the total value of property or beneficial interests at the following rates:

(1) ~~Two per cent. Where~~ at the rate of 2% of the clear value of the interest in property passing to a person if the person ~~or persons~~ entitled to any beneficial interest in such property ~~shall be~~ is:

(a) the husband, wife, lineal issue, or lineal ancestor of the decedent; ~~or~~

(b) any child adopted as such in conformity with law, or any child to whom such decedent for not less than ~~ten~~ (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, ~~however,~~ such relationship began at or before the child's ~~fifteenth (15)~~ 15th birthday, and was continuous for ~~ten (10)~~ years; or

(c) any lineal issue of such adopted or mutually acknowledged child; ~~at the rate of two per cent (2%) of the clear value of such interest in such property passing to such person.~~

(2) ~~Four per cent. Where~~ at the rate of 4% of the clear value of the interest in property passing to a person if the person ~~or persons~~ entitled to any beneficial interest in such property ~~shall be~~ is:

(a) the brother or sister or a descendant of a brother or sister of the decedent;

(b) a wife of a son, or the husband of a daughter of

the decedent~~;~~ ~~at the rate of four per cent (4%) of the clear value of such interest in such property passing to such person~~.

~~(3) Six per cent. Where~~ at the rate of 6% of the clear value of the interest in property passing to a person if the person ~~or persons~~ entitled to any beneficial interest in such property ~~shall be~~ is the uncle, aunt, or first cousin of the decedent~~;~~ ~~at the rate of six per cent (6%) of the clear value of such interest in such property passing to such person~~.

~~(4) Eight per cent. Where the person or persons~~ at the rate of 8% of the clear value of the interest in property passing if the entity entitled to any beneficial interest in such property ~~shall be~~ is:

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated~~;~~ ~~or shall be~~

(b) is a stranger in blood to the decedent~~;~~ or

(c) ~~shall be~~ is a body politic or corporate~~.~~ ~~at the rate of eight per cent (8%) of the clear value of such interest in such property passing to such person, institution, association, corporation or body politic.~~"

Section 3. Section 91-4410, R.C.M. 1947, is amended to read as follows:

"91-4410. Other rates, where remaining amount in excess of $25,000.00. The ~~foregoing~~ rates in ~~section~~ 91-4409

47

are for convenience termed the primary rates~~.~~ When the amount of the clear value of ~~such~~ the remaining amount of the property or interests exceeds ~~twenty-five--thousand dollars ($25,000.00)~~, the ~~rates~~ rate of tax upon such excess shall be as follows:

(1) ~~Rate--where--amount-$25,000.00-to-$50,000.00-Upon~~ upon all in excess of ~~twenty-five---thousand---dollars ($25,000.00),~~ and up to ~~fifty-thousand-dollars-($50,000.00),~~ two ~~(2)~~ times the primary ~~rates~~ rate;

(2) ~~Rate--where-amount-$50,000.00-to-$100,000.00-Upon~~ upon all in excess of ~~fifty-thousand--dollars--($50,000.00),~~ and up to ~~one-hundred-thousand-dollars-($100,000.00),~~ three ~~(3)~~ times the primary ~~rates~~ rate;

(3) ~~Rate-where-amount-over-$100,000.00,-Upon~~ upon all in excess of ~~one--hundred-thousand-dollars-($100,000.00),~~ four ~~(4)~~ times the primary ~~rates~~ rate."

Section 4. Section 91-4414, R.C.M. 1947, is amended to read as follows:

"91-4414. Exemptions~~.~~ ~~from--first---$25,000.-----The following-exemptions-from-the-tax-are--hereby--allowed,--the~~ (1) The exemption allowed to each person, institution, association, corporation~~,~~ ~~and~~ or body politic ~~to~~ shall be taken ~~out-of-the-first-twenty-five-thousand-dollars-passing by--any--such--transfer---to---such---person,---institution, association,--corporation--or--body--politic~~ as provided in

48

91-4409~~.~~.

~~(1)~~ (2) ~~Transfers~~ The following transfers are totally exempt~~:~~:

(a) ~~All~~ all property transferred to the state or any of its institutions~~,~~ or to municipal corporations within the state for strictly county, city, town, or municipal purposes~~, shall be exempt~~;

(b) ~~All~~ all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust~~,~~ organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual~~,~~ and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, ~~shall be exempt,~~ if any of the following conditions is present:

~~(a)~~ (i) ~~The~~ the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

~~(b)~~ (ii) ~~The~~ the property transferred is limited for use within this state;

~~(c)~~ (iii) ~~in the event that~~ the society, corporation,

institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country, and at the date of the decedent's death any one of the following conditions existed:

~~(i)~~ (A) ~~The~~ the other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

~~(ii)~~ (B) ~~The~~ the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

~~(iii)~~ (C) ~~The~~ the society, corporation, institution,

foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(3) The clear value of one-half of the property distributed or passing to decedent's surviving spouse is exempt.

~~(2)~~ (4) ~~$25,000, $5,000, $2,000 exempt, when, Property of the clear value of twenty-five thousand dollars ($25,000)~~ The following amounts are exempt:

(a) property of the clear value of $40,000 transferred to the ~~wife or to the husband~~ surviving spouse of the decedent; ~~five thousand dollars ($5,000)~~

(b) property of the clear value of $15,000 transferred to:

(i) each minor lineal issue of the decedent; ~~or~~;

(ii) any minor child adopted as such in conformity with law; ~~or~~;

(iii) any minor child to whom such decedent for not less than ~~ten (10)~~ years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, ~~however,~~ such relationship began at or before the child's ~~fifteenth (15)~~ 15th birthday, and was continuous for ~~ten~~

51

~~(10)~~ years~~;~~ or

(iv) any minor lineal issue of such adopted or mutually acknowledged child~~;~~ and ~~two-thousand-dollars-($2,000)~~

(c) property of the clear value of $7,000 transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in ~~the-first--subdivision--of--section~~ 91-4409(1) ~~shall-be-exempt.~~

(5) Any child of ~~the~~ a decedent ~~shall-be~~ is entitled to credit for so much of the tax paid by ~~the-wife-or-husband~~ the decedent's spouse as applied to any property which ~~shall~~ is thereafter be transferred by or from such ~~husband-or-wife~~ spouse to ~~any-such~~ the child, provided the ~~husband--or--wife~~ spouse does not survive ~~said~~ the decedent to exceed ~~ten~~ 10 years.

~~(3)~~ (6) ~~$500-exempt-when.~~ Property of the clear value of ~~five-hundred-dollars~~ $1,000 transferred to each of the persons described in ~~the--second--subdivision--of-section~~ 91-4409(2) ~~shall-be~~ is exempt.

~~(4)~~ (7) ~~Property-without-the-state--exempt--when.~~ No tax ~~shall~~ may be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and ~~which~~ the tax has actually been paid, secured,

52

or guaranteed, provided such property is not without this state temporarily ~~nor~~ or for the sole purpose of deposit or safekeeping~~;~~ and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Section 5. Section 91-4416, R.C.M. 1947, is amended to read as follows:

"91-4416. Discount -- interest. (1) If ~~such~~ the tax is paid within ~~eighteen (18)~~ months ~~from the accruing thereof~~ of the death of the decedent, a discount of ~~five per cent (5%)~~ shall be ~~allowed and~~ deducted therefrom. The deduction of this discount of ~~five per cent (5%)~~ shall be accomplished by paying within the ~~eighteen (18)~~-month period from the date that the tax accrues an amount equal to ~~ninety-five per cent (95%)~~ of the total tax declared due by the person making payment.

(2) If such tax is not paid within ~~eighteen (18)~~ months ~~from the accruing thereof~~ of the death of the decedent, interest shall be charged and collected thereon at the rate of ~~ten per cent (10%) per annum~~ a year from the time the tax accrued~~;~~ unless ~~by reason~~ because of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, ~~such~~ the tax ~~shall~~ is not ~~be~~ determined and paid as herein provided, in which case

53

interest at the rate of ~~six-per-cent-(6%)~~ shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which time ~~ten-per--cent--(10%)~~ shall be charged~~.~~ ~~provided-that-litigation~~ Litigation to defeat the payment of the tax ~~shall-not-be-considered~~ is not necessary litigation. ~~In-all-cases-when~~ When a bond ~~shall-be~~ is given under ~~the-provisions-of-section~~ 91-4419, interest shall be charged at the rate of ~~six-per-cent-(6%)~~ after ~~one~~ (1) year from the date of death~~,~~ until the date of payment thereof."

Section 6. Section 91-4419, R.C.M. 1947, is amended to read as follows:

"91-4419. Bond for deferred payment of tax. ~~(a)~~ Any beneficiary of any property charged with a tax under ~~this act~~ 91-4401 through 91-4406~~,~~ and any ~~executors,~~ ~~administrators~~ personal representative ~~and~~ or ~~trustees~~ trustee ~~thereof~~ of the estate~~,~~ may elect, within ~~eighteen~~ 18 months from the date of the death of decedent or transfer ~~thereof-as-herein-provided~~ of the property, not to pay such tax until the person ~~or--persons~~ beneficially interested ~~therein-shall~~ ~~come~~ comes into the actual possession or enjoyment thereof. The person ~~or-persons~~ so electing shall give a bond to the state ~~in-a-penalty-of-three-times~~ for the amount of ~~any-such~~ the tax, with such sureties as the district court of the proper county or the ~~state~~ department

54

of revenue, as the case may be, may approve, conditioned for the payment of ~~such~~ the tax and interest thereon~~, at such time or period as~~ at the time the person ~~or persons~~ beneficially interested therein ~~may come~~ comes into the actual possession or enjoyment of ~~such~~ the property~~,~~. ~~which~~ The bond shall be filed in the district court, or in the office of the state treasurer as the case may be. Such bond must be executed and filed and a full return of such property upon oath made to the district court or the department of revenue within 18 months from the date of the death of decedent or transfer as herein provided, and such bond must be ~~renewed every 5 years, and said deferred tax shall bear interest at 6% per annum after such 18 months~~ kept in force until the tax and interest are paid in full."

Section 7. Section 91-4453, R.C.M. 1947, is amended to read as follows:

"91-4453. Definitions. (1) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and not as the property or interest therein of the decedent, grantor, donor, or vendor, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any

55

interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein prescribed to each individual or corporation. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. "Intangible" or "intangible property", when used in this act without other qualifications, shall be taken to include all moneys, stocks, bonds, notes, securities, and credits of all kinds, secured or unsecured. The words "county treasurer", "public administrator", and "county attorney", as used in this act shall be taken to mean the treasurer, public administrator, and county attorney of the county in which the district court has jurisdiction of the proceedings.

(2) The terms "joint" and "jointly" as used in this chapter refer to ownership of property by two or more persons having as one of the incidents of such ownership the right of survivorship in the surviving owner or owners upon the death of one of the owners. This definition does not affect the concept of property owned as tenants in common, and this type of ownership shall continue to be recognized where applicable."

-End-

APPENDIX B

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO REPLACE THE INHERITANCE TAX WITH AN ESTATE TAX BASED UPON THE STATE CREDIT ALLOWED IN THE FEDERAL ESTATE TAX; REPEALING CHAPTER 44 OF TITLE 91."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the Montana Estate Tax Act.

Section 2. Intent. The intent of this chapter is to provide a method of tax relief while allowing this state to collect the maximum tax credit against the federal estate tax imposed with respect to a decedent's estate.

Section 3. Imposition of estate tax. There is an estate tax imposed upon the transfer of the estate of every decedent leaving an estate subject to the federal estate tax imposed by the United States that, in whole or in part, has a taxable situs in this state.

Section 4. Taxable situs. For purposes of this tax, property located within the state of Montana or its jurisdiction and intangible property possessed by a resident of this state are subject to the estate tax.

Section 5. Amount of tax. The estate tax imposed upon

each estate is equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state.

Section 6. Who collects. The estate tax shall be collected by the several county treasurers or the department of revenue for deposit with the state treasurer in the state general fund.

Section 7. When payable. The estate tax is payable to the county treasurer of the county in which the personal representative of the estate is appointed or to the department of revenue at the same time or times at which the United States tax is payable and shall bear interest, if any, at the same rate and for the same period as the United States tax.

Section 8. Liability. Personal representatives, trustees, and grantees under a conveyance made during the grantor's life and taxable hereunder are liable for estate taxes, with interest, until those taxes have been paid.

Section 9. Lien. Estate taxes and interest are a lien on the property for a period of 10 years from the date of death, unless sooner paid.

Section 10. Filing returns -- general -- supervised administration -- unsupervised administration. (1) When the possibility exists that the estate of a decedent is liable

for payment of death taxes under the United States estate tax laws, the personal representative shall file with the district court of the county in which the estate would be administered and with the department of revenue the following:

(a) duplicates of the United States estate tax returns; and

(b) a certificate or other evidence from the internal revenue service or its successor indicating the amount of the United States estate tax as computed by that agency.

(2) In supervised administration of an estate, the district court shall hear all parties desiring to be heard with respect to the amount of state estate tax and shall enter an order determining that tax and the amount thereof so due and payable.

(3) In other than supervised administration of an estate, the personal representative shall file with the department of revenue the documents listed in subsection (1) of this section and any other pertinent information necessary to establish the amount of the state estate tax. If there is no personal representative, the person in control of property subject to estate tax shall file the documents required of the personal representative.

Section 11. Credit for tax paid another state. The amount of tax due under this act shall be credited with the

54

lesser of the amount of the death tax paid another state and credited against the federal estate tax or a pro rata share of the credit allowed the several states by federal estate tax law, when the following conditions apply with regard to a decedent's property:

(1) it has a taxable situs in Montana;

(2) a death tax is levied upon it in another state for which a credit is allowed by federal estate tax law; and

(3) there is no provision in the taxing state that allows the property to be taxed in the state of decedent's domicile.

Section 12. Repeal. Sections 91-4401 through 91-4467 are repealed.

Section 13. Effective date and applicability. This act is effective on July 1, 1978, and applies to the estate of any person who dies on or after that date.

-End-

45th LEGISLATIVE SESSION

COMMITTEE ON TAXATION

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
1	1/12	1/26	2/25		2/25				
25	1/3	1/11	TABLED						
28	1/3	1/14	3/15			3/15			
31	1/3	1/11	3/8			3/8			
44	1/5	1/13	2/2			2/2			
48	1/5	1/13	2/8			2/8			
59	1/7	1/19	1/25		As Am. 1/25				
60	1/7	1/14	2/25		2/25				
61	1/7	1/21	1/26	WITHOUT RECOMMENDATION, AS AMENDED					
65	1/8	1/18	1/21			1/21			
66	1/8	1/18	2/14		2/14				
74	1/11	2/4	2/23	WITHOUT RECOMMENDATION					
79	1/11	1/19	1/19	1/19					
81	1/12	1/26	1/28		1/28	Ref. back	2/1 Rec'd. Do Not Pass 2/25		
87	1/13	1/27	1/27			1/27			
90	1/13	1/26	1/26		1/26				

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

January 11, 1977

The third meeting of the Taxation Committee was called to order on the above date in Room 415 of the State Capitol Building by Chairman Mathers at 8:05 a.m.

ROLL CALL: Roll call found all members present with the exception of Senator Brown who was excused.

The following witnesses were present to testify:

Tom Windsor	Mont. Chamber of Commerce
Gail M. Stoltz	Mont. Farmers Union
Edward W. Nelson	Mont. Taxpayers Assoc.
Tom Stoll	Dept. of Revenue
Everett Snortland	Mont. Farm Bureau
Mons Teigen	Mont. Stockgrowers Assoc.
Terry Murphy	Senator, Dist. 40
Ed Jasmin	Mont. Bankers Assoc.
John Wheeler	C.P.A., Helena

Chairman Mathers opened the meeting by first explaining that the two bills being heard, Senate Bills 25 and 31, were the result of study the past summer by the Subcommittee on Taxation. He introduced Researcher Terry Olcutt Cohea who had worked with the Subcommittee, and who gave a brief explanation of the bills. Chairman Mathers presented committee members with copies of the Montana Inheritance Tax booklet.

CONSIDERATION OF SENATE BILL 25: Chairman Mathers, sponsor of this bill, discussed it briefly, saying that although the bill would cost the state $5 million in lost revenue, he felt the bill would be more equitable to the people and he thought this most important.

CONSIDERATION OF SENATE BILL 31: Senator Watt said his bill was explained in the MIT booklet and would lower inheritance taxes also, but less than SB25. He continued, stating that sometimes when family farms were transferred to the heirs the inheritance tax invokes a hardship on the survivors and although they could find no instances on record of the farm actually being lost due to the tax, he felt that something should be done to alleviate the tax burden when family farms ranches, small businesses, are passed on to heirs.

Chairman Mathers then asked for questions and following clarification of present Montana inheritance tax laws for committee members benefit, the Chairman called for testimony from the witnesses.

Mr. Teigen was first to testify, saying he favored SB25 and 'lightly' opposed SB31. He felt that inheritance taxes were necessary, and worked toward breaking up some of the overly large estates.

Mr. Nelson testified next and neither supported nor opposed the bills, but agreed with Mr. Teigen, stating further that he felt capital invested whether in a farm, ranch or small business, should be protected and did not feel it was right that additional capital should have to be borrowed to maintain the business, referring to the position that some heirs find themselves in, of having to borrow to pay inheritance taxes.

Mr. Snortland concurred with the testimony of Teigen and Nelson and said he supported SB25 and would go along with SB31 if necessary. Ms. Stoltz distributed copies of her testimony, Exhibit #1, attached, stating the Farmers Union supported SB31 and appreciated the work of the Subcommittee on Taxation.

Sen. Murphy appeared in behalf of SB31 and said he had several amendments to propose to the bill, saying he felt the exemptions were too low as the bill appears. Mr. Jasmin next spoke and said he thought SB25 would greatly simplify preparing the Montana inheritance tax returns. He cited instances of retired couples moving to other states because of this state's inheritance tax laws and he felt some of this could be remedied. Mr. Windsor also spoke saying they favor both bills but like SB25 because of increased tax relief and clarity.

Chairman Mathers invited others present to speak and Mr. Stoll said the Department agreed with SB31 and opposed SB25 not only because of the greater loss of revenue, but also because there were problems in the bill, such as no penalty provision, no filing date and several other details.

The Chairman than asked members if they had questions of any of the witnesses and during the ensuing discussion it was noted that the Fiscal Note for the bills was not yet available. Sen. Towe asked about the feasibility of going 'piggy back' on the Federal inheritance tax laws and this was discussed by members. Mr. Wheeler joined in the discussion saying he liked the concept of tying the tax with the Federal tax laws. Sen. Turnage said that since the Federal law was quite new, it might be advisable to wait and see what problems might arise before tying into it, with Montana's inheritance tax laws.

Arising from the discussion were suggestions by Sen. Manning to have the two bills, SB25 and 31, studied further, particularly in relation to their cost to the state, and too, Sen. Towe is to work on a 'piggy back' bill, as he termed it. No action therefore was taken on either of the two bills at this time.

A move to adjourn was made by Sen. Norman, seconded by Sen. Manning.

Mathers

WILLIAM MATHERS CHAIRMAN

SENATE TAXATION COMMITTEE

SEN. BILL 25, 31

VISITORS' REGISTER

DATE 1/11/77

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
Hailey M. Stolz	Mt. Farmers Union	SB 31	✓	
Edward Wheldon	Montana Taxpayers Assc.	SB 25 & 31		
Tom Stogl	Dept. of Revenue	SB 25 & 31		
Jack Stevens	Mont. Farm Bureau	SB 25 & 31	—	—
Everett M. Smethurst	Mont. Farm Bureau	SB 25 & 31	✓	✓
Mona Tegen	Mt. Stockgrowers Assn	SB 25-31	X 25	31 X
Jerry Murphy	Self	SB 31	✓	
Jerri Cadby	Mt Bankers Assn	SB 25 & 31	✓	
Ed Larkin	Mont Bankers Assn	SB 31	!	
Tom Kinnear	Dept. of Comm.			
John Wheeler	C.P.A., Helena			

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 7, 1977

The thirty-fourth meeting of the Taxation Committee was called to order for executive action on adjournment of the Senate at 3:15 p.m. on the above date in Room 415 of the State Capitol Building by Chairman Mathers.

Roll call found all of the members present.

The committee again discussed SB352 and Sen. Towe said he feels there is some reasonableness to make this law apply in the same manner as the federal tax law. Further discussion brought out that the Fiscal Note was overstated. Sen. Brown mentioned this might be a benefit to agriculture.

DISPOSITION: Sen. Towe Moved SB352 Do Pass. A roll call vote was taken which resulted in the bill passing by a 9 to 1 vote. Sen. Watt voted "No."

Sens. Manning and Healy left at this point in the meeting.

Sen. Goodover Moved SB350 Do Pass without amendments. A discussion followed and Chairman Mathers asked if the committee wished to amend the bill and Sen. Norman made a substitute motion that SB350 Do Not Pass. A motion was then made by Sen. Turnage to reconsider the actions with suggested amendments to be made. Sen. Goodover wished to be on record as voting "No" and the other members voted for Sen. Turnage's motion. Mr. Tippy was instructed to bring the amendments up to date and no further action would be taken until these had been considered.

The committee then directed their attention to SB378, and voted to reconsider their actions as of February 25. They discussed the bill further.

DISPOSITION: Sen. Brown Moved SB378 Do Pass. The vote was 6 to 2 in favor of passage of the bill.

Following disposition of this bill the committee again discussed SB31 and Sen. Watt questioned whether the Governor had said he would veto bills that would reduce taxes. The amendments for SB31 will be acted upon at the next meeting.

A motion for adjournment was made by Sen. Turnage, and carried.

WILLIAM MATHERS CHAIRMAN

ROLL CALL

SENATE TAXATION COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 3-7-77

NAME	PRESENT	ABSENT	EXCUSED
SEN. WATT	✓		
SEN. BROWN	✓		
SEN. GOODOVER	✓		
SEN. HEALY	✓		
SEN. MANNING	✓		
SEN. NORMAN	✓		
SEN. ROSKIE	✓		
SEN. TOWE	✓		
SEN. TURNAGE	✓		
CHAIRMAN MATHERS	✓		

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 8, 1977

The thirty-fifth meeting of the Taxation Committee was called to order on the above date in Room 415 of the State Capitol Building by Chairman Mathers at 8:05 a.m.

ROLL CALL: Roll call found all the members present.

There were no witnesses present.

CONSIDERATION OF HOUSE BILL 50: Rep. Fabrega, Dist. 44, presented his bill and said it called for legislation to be enacted by the Legislature following the statewide reappraisal of property by the Department of Revenue. The bill specifies that the utilization of the reappraisal shall be reviewed before any legislative action is taken and Rep. Fabrega said he thought some adjustment of the tax formula would be necessary before laws are passed on property tax. Mr. Groff of the D.R. was present and said the Department is in support of the concept of the bill as he said property valuations on an average across the state will go up perhaps around 30 to 35% and that millage levies could also be increase considerably because of this. It will go down in some areas as well, and he said for this reason he felt that a comittee out of the committees should analize the information they will receive from the Department and work out legislation before the new ta formulae go into effect.

Chairman Mathers asked for other proponents or opponents of the bill and following, permitted questions from the committee.

The committee looked at the effective date for passing legislation following the study and since the Legislature is to meet before the end of the year they suggested a number of amendments that would assure some action be taken by the Legislature before the end of the anticipated special session.

A number of suggestions were made as far as the committee makeup and the members agreed that 6 members from the House and 6 from the Senate be included; that the members of this special committee be appointed by the Speaker of the House and the Committee on Committees in the Senate; that there be included a member from the Executive Department to be an ex officio member; that there be someone representing local government; that the members include as much as possible, members from all regions of the state; that the House and Senate members be evenly divided politically.

Mr. Tippy, Legislative Attorney, was asked to draw up the amendment and this was done, see Exh. #1, attached. The members agreed to the concept of the amendment, specifying there

would also have to be an amendment to the title, providing for the select committee. Several changes were proposed to the portion of the bill which specified the Legislature must act when the reappraisal program is completed and they are in possession of data from the D.R. In attempting to pin down the enactment of such legislation, Sen. Turnage moved such legislation be passed before December 31, 1978. Sen. Towe proposed the phrase: "in no event shall the suspension continue past December 31, 1977."

Discussion continued with the members discussing how the Legislature would have to make a decision insofar as property tax is concerned, but it was felt it was not mandatory to write this into law as the Legislature would be forced to reach some sort of a decision, by necessity.

After continued discussion, Sen. Towe made a Substitute Motion to set December 31, 1977 as the date by which action must be taken. This motion was defeated on a show of hands 3 for, and 7 against. Sen Turnage then moved his amendments as specified on Exh. #1, attached. This motion passed unanimously.

DISPOSITION: Sen. Goodover then Moved HB50 As Amended, Be Concurred in. The motion was carried unanimously.

Following, the meeting was adjourned with plans to reconvene on adjournment of the Senate, this date.

WILLIAM MATHERS CHAIRMAN

ROLL CALL

SENATE TAXATION COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 3/8/77

NAME	PRESENT	ABSENT	EXCUSED
SEN. WATT	✓		
SEN. BROWN	✓		
SEN. GOODOVER	✓		
SEN. HEALY	✓		
SEN. MANNING	✓		
SEN. NORMAN	✓		
SEN. ROSKIE	✓		
SEN. TOWE	✓		
SEN. TURNAGE	✓		
CHAIRMAN MATHERS	✓		

STANDING COMMITTEE REPORT

March 8 19 77

MR. PRESIDENT

We, your committee on TAXATION

having had under consideration SENATE Bill No. 31

Respectfully report as follows: That SENATE Bill No. 31,

introduced bill, be amended as follows:

1. Amend page 1, section 1, lines 12 through page 2, line 13.
Strike: section 1 in its entirety
Following: line 11
Renumber: following sections

2. Amend page 11, section 6, line 15.
Following: "91-4419"
Strike: "Bond"
Insert: "Permission"

3. Amend page 11, section 6, line 19.
Following: "may"
Strike: "elect"
Insert: "request"

4. Amend page 11, section 6, line 21.
Following: "property,"
Insert: "permission"

~~DO PASS~~

5. Amend page 11, section 6, line 22.
Following: "tax"
Insert: "or a portion thereof"

CONTINUED

Chairman.

STATE PUB. CO.
Helena, Mont.

6. Amend page 11, section 6, line 24.
Following: "thereof"
Insert: ", or until payment can be made without liquidating a portion of the capital assets. The department may permit the deferral of payment for not more than 5 years, upon such conditions and terms as the department considers necessary to assure payment"
Following: "."
Strike: the remainder of line 24 through all of line 16 on page 12.

AND AS AMENDED,

DO PASS

WILLIAM MATHERS CHAIRMAN

S-4

TAXATION COMMITTEE

45TH Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 309	Royalty interests may be required to share burden of resource indemnity trust tax on a pro rata basis & exempting gov't. royalties from such tax; amend. 84-7006.	3/3	Mathers	3/21	BE CONCURRED IN	4/6
SB 384	Providing 6-mill or less voted levy for hospital district purposes; amend secs.	3/3	McOmber	3/18	BE CONCURRED IN	4/6
SB 352	Allow 5-year income averaging for state income tax purposes; providing effective date.	3/14	Jergeson	3/22	NOT BE CONCURRED IN	4/7
SB 350	Providing for establishment of full market value of new or expanded business real property over a period of 5 years.	3/18	Stephens	3/24	NOT BE CONCURRED IN	4/6
SB 31	To implement recommendations of interim subcommittee on taxation, revising & updating Montana inheritance tax regarding joint estates & exemptions.	3/19	Watt	3/23	AS AMENDED BE CONCURRED IN	4/7
SB 431	To provide for allocation of income earned from a business jointly owned by spouses.	3/19	Jergeson	3/24	NOT BE CONCURRED IN	4/7

TAXATION COMMITTEE
45TH LEGISLATURE

Rep. E. N. Dassinger, Vice-Chairman, acting chairman, called the Taxation Committee to order at 8:10 a.m., in room 225, Capitol Building, Helena, March 23, 1977. All members were present except Representatived Ed Lien, W. Jay Fabrega, Jack Uhde, John Vincent, Steve Waldron who were excused.

SENATE JOINT RESOLUTION 29

Senator Bob Brown, District 10, Whitefish, sponsor of Senate Joint Resolution 29, explained this resolution calls for an interim study on forest lands and timber products. He feels there is a need for a study to be made into the yield tax as a possible replacement for the present ad valorem system of taxing forest lands. Members of the interim committee are to be selected from both the House and Senate taxation committees, and specifically and definitely are to study the yield tax among other alternatives.

Bill Kirkpatrick, Champion International Missoula, advised that this has been a matter of much controversy. He has met with the leadership in the House and fully discussed this problem. The industry, the woodlot owners, and the state government are in agreement that this is the thing to do rather than fight.

Robert L. Helding, attorney from Missoula, Director of Montana Wood Products Association, feels there is a need to know the effect on school districts from any legislation on taxation on timber. This is the third largest industry in Montana and would have a great effect on school revenues. This study is long overdue and will lay at rest some of the misconceptions about taxing timber. He thinks such a study would accomplish this. There are 5200 persons connected with the timber industry that are unemployed.

There were no opponents.

SENATE BILL 251

Senator John Manley, district #14, Drummond, advised this is a bill to include sprinklers in the list of irrigation and drainage facilities which are taxed as like facilities by the federal and state governments. An irrigation and drainage facility under the present law is to be taxed through revaluation of the property. This means installation of a pump, buried line, gravity line, etc., would be taxed through revaluation of the land and why the department of revenue started to ignore this and began taxing sprinklers per se he doesn't understand. The court cases only settle the taxation of sprinklers with the named persons involved and set no precedent. He feels that through the increased production and upgrading from dry land to irrigated land valuations, the sprinklers provide much greater taxable base, especially on land that doesn't lend itself to flood irrigation. He feels sprinkler systems should not be taxed as pieces of machinery.

Les Loble, representing the thirty plus sprinkler owners in Deer Lodge, Powell and Madison Counties, states he has sued the DOR on their behalf to enforce the law that sprinklers ought not to be taxed. The fiscal note assumed that taxes are being and have been taxed in every county in the state, but this is not true. The

acre for major leveling and also for some sprinklers. In both cases the land is improved and water is used, and in both cases taxes are based at the land level because land is being taxed at its productivity level. Perhaps it is land that is irrigable only by sprinkler, but it will be taxed on its productivity capacity.

The question of the $1 million in lost taxes by exempting sprinklers being imposed on people living in the cities arose. This loss would be spread among all 56 counties on land, cattle, machinery, production, etc.

It is going to be necessary to have a definition of "AFFIXED TO THE LAND."

Sprinkler systems are designed for a specific piece of land and it is difficult and unsatisfactory to move them between different fields. It takes 11 days to irrigate a 40-acre field. Cost of irrigation is a deductible expense.

Irrigation increases the tax base since pasture land is not taxed as high as is irrigated farm or pasture land. After three years, pasture land put under irrigation is worth more and is taxed at its more productive capacity. Because of irrigation, more people are hired, there is more activity in the community, more tax base, more property tax base.

There are 140 ditch companies and 49 irrigation districts in Montana. The question of whether the DOR will tax the districts on their pumps arose. Ditch companies are taxed on their pumps, facilities, etc. This will have to be decided at a later date.

The sponsor and others feel that because of the tax on the higher valuation of land, sprinklers should not be taxed since flood irrigation equipment is exempt. However, if the land were not revalued and taxed at the higher rate, it would be acceptable to put some tax on the sprinklers.

This was a large meeting with many farmers and ranchers in attendance. Many signed a witness sheet which is attached.

Senator William Mathers, District 26, chairman of the Senate Taxation Committee, sponsor of SB 31, explained this bill was rewritten into a committee bill. It started out introduced by Senator Watt as the result of an interim study commission recommendation and after studying studying inheritance tax laws because there was objection to the report and to the original bill because it abolished inheritance tax for Montana, SB 31 was written and as proposed now gives a great deal more deductions than were allowed previously. Recommendations were to piggyback inheritance laws on federal inheritance laws, but federal laws are changed and no one knows what they are going to do.

SENATE BILL
31

If we take a $200,000 estate, and one spouse passes away, $100,000 is excluded because of joint tenancy, $50,000 is excluded from taxation by operation of subsection 3, page 8 of SB 31. $40,000 of the remaining $50,000 is exempt by allowance on page 8(a). The remaining $10,000 would be subject to a tax of 2% but after deducting funeral and estate expenses, there would be no tax at all on a $200,000 estate.

Under present laws, assuming the first $100,000 is exempt, $25,000 is exempt, the remaining $75,000 is taxed with $25,000 taxed at 4% which equals $1,000; $50,000 is taxed at 6% which is $3,000, making a total of $4,000. The inheritance tax was established in Montana in 1923 and has never been changed since then. We realize now that with increased valuation of property, $60,000in 1923 would buy 2 or 3 sectionsof land, but today it won't buy very much. The effect on revenue to the state is estimated that in the second half of the biennium, there would be a tax decrease in collection of $1 to $1.5 million dollars. The last six months of the biennium will have that much tax loss. So that we can balance the budget, we felt that by the end of 1979 we will have some reversions that we do not anticipate, and that there will be enough revenue left in the state that this will be justified. This bill passed the Senate by 48-1.

Steve Gunderson, legislative assistant for the Montana Farmers Union, headquartered in Great Falls, stated that for many years they have been interested in doing something about this tax. See his testimony attached. They support SB 31.

There were no opponents:

The fiscal note is higher because of the joint tenancy change. Under federal law joint tenancies are taxed at 100%. Under the 1976 referendum act, a gift tax becomes a part of joint tenancies when they are formed. Tenants-in-common has very little value as far as the state tax. They are like an undivided half and would pass by will. Joint tenancy property passes to the joint tenant by law - this is an advantage as to federal law, but very little as to state inheritance taxes.

Senator Mathers advised that under joint tenancy both husband and wife own half the estate by law. It is the legal ownership of the property, which is shown by the deed that determines this. If the property is not in both the husband and wife's names, and is solely in the name of the husband, and he leaves it to his spouse, it would be passed 50% going to the surviving spouse with no tax, because of the 50% marital deduction. If you leave a life estate, it will not qualify under federal law, but it will be accepted with a 50% exclusion under this proposed law.

Inheritance tax is not based upon productivity of the property, but is based on market value. The Bradley bill would go along with this. It takes clear value which has a different meaning. This law would apply to all small business as well as farms and ranches. Productivity applies to all closely-held or family-type estates.

An estate would have to be held in joint tenancy as shown by a deed to be taxed under joint tenancy.

Questions from the committee to Mr. Tom Stoll, Administrator of the Inheritance Tax Division of the department of revenue, considered what would happen to the income from the inheritance tax if different deductions were taken in SB 31.

If the first joint tenancy were taken and the second exemption of one-half were excluded, what would the revenue income to the state be? Mr. Stoll advised a 50% exclusion to the surviving spouse and the 100% joint tenancy almost exactly opposed one another; if both of those were taken out, it would probably reduce it down to around $1.5 million dollars for an entire biennium. If the 50% marital exclusion were removed, it would come out about $1.5 million dollar

loss. The Senate committee feels inheritance tax should be abolished. Inheritance tax is a very small revenue to the state of Montana.

If the first half is excluded from jointly held property excluded one-half and that is all, this would make for a much less loss than $1 million dollars. This offsets one another when put into the same bill.

In joint tenancies held with other than a wife, was consideration given to applying the principle of applying the credit against the joint tenancy inheritance portion? Would this be giving too much through a non-earned joint tenancy? If held in joint tenancy with anyone this law would apply. We have increased the amount allowed for adult children and for minor children and others.

The question of a gift which does not involve a recompense for the amount given arose. Should the state take the route the federal requires and require value?

Tom Stoll said an exclusion of 50% is given to the surviving spouse under jointly held property or under solely owned property, and taxation on that amount is exempt. 4405, joint tenancy statute, would be difficult to amend. Rep. Huennekens suggested a study on inheritance taxes.

In a $200,000 joint tenancy estate, there would be a tax of $2100; however, any children involved would make for some other exemptions. There probably would be no tax on such an estate.

If it were a joint tenancy estate, under the present law, there would be a $100,000 exemption. Under SB 31 as it is presently written 50% would be excluded, $50,000 would be an exemption because of the exemption of the surviving spouse. Then an exemption would be subtracted from the lowest tax bracket. A $25,000 exemption removes the 2% tax bracket, but under this bill anything left after exemptions goes into the lowest tax bracket. This is the largest single relief portion of this bill - taking it off the top tax bracket.

This bill was recommended by the subcommittee on taxation and generally revises and clarifies existing inheritance tax laws as well as raising exemptions, providing that the lowest tax rate shall be applied to the first $25,000 of value, rather than the $25,000 minus the exemption, which is now the case, lowers the amount of the bond minors must post to defer inheritance taxes until they come of age, and defines the terms "joint" and "jointly" to clarify existing references in the chapter.

In an executive meeting, the committee approved proposed amendments offered by Rep. Ramirez adding "tillable irrigated" to the description of agricultural land in HB 630.

The meeting adjourned at 12:00 a.m.

Herb Huennekens

REP. HERB HUENNEKENS, CHAIRMAN

Josephine Lahti

Josephine Lahti, Secretary

TAXATION COMMITTEE
45TH LEGISLATURE

The committee on taxation was called to order in executive session by Rep. Herb Huennekens, at 8:00 a.m., April 7, 1977, in room #434, Capitol Building, Helena. All members were present.

SENATE BILL 155 - Rep. Severson explained he would like to have SB 155 reconsidered because he thinks irrigation districts should be exempt from taxation. He made a motion that SB 155 be reconsidered. After a good deal of adverse discussion, and some question about constitutionality of taxing an irrigation district, the motion failed.

SENATE BILL 251 - Rep. Vincent moved SB 251 NOT BE CONCURRED IN. Rep. Bertelsen made a substitute motion that SB 251 BE CONCURRED IN. He moved an amendment to page 4, line 24, to strike "pumps"; and on page 5, line 1, following: "system", insert "except pumps". This motion carried - Rep. Williams voted No, and Rep. Gilligan was absent.

Rep. Bertelsen made a motion to adopt the amendments as described in the attached amendments. This motion carried with two members absent.

After further discussion, and several thoughts that sprinklers are somewhat like household equipment which is not taxed; that this question should be studied by an interim committee; that sprinklers be exempt from taxation provided they are owned by the surface owner; that basic evaluation is how many tons of alfalfa an acre will produce; whether this type of equipment should be taxed at all and if so, at what rate; the committee voted on the Be Concurred In motion which failed by a roll call vote of 7-9 with one absent. So SENATE BILL 251 is recommended AS AMENDED NOT BE CONCURRED IN.

SENATE BILL 352 - Rep. Williams made a motion that SB 352 NOT BE CONCURRED IN. Motion carried unanimously with Rep. Waldron absent.

SENATE BILL 431 - Rep. Lien moved that SENATE BILL 431 NOT BE CONCURRED IN. After discussion, the motion carried with 15 voting yes, Rep. Uhde No, and Rep. Waldron absent.

SENATE BILL 31 - This bill would have a fiscal effect of $2.6 million dollars for a year or $5.2 million dollars for the biennium. Senate Bill 25 would have repealed the inheritance tax law. SB 31 is a compromise with SB 25 based on the federal estate tax exemption. Tom Stoll, DOR, advised that when a gift tax is paid, they 1/2 of the estate would be taxable, otherwise it would be taxed at 100%.

Rep. moved that section 1 be reinserted - the stricken material on page 1, lines 12-25, page 2, lines 1-13. This amendment would return the language to what was recommended by the interim committee. This amendment was adopted unanimously. Reps. Uhde and Fagg were absent.

Rep. Dassinger moved that SENATE BILL 31 AS AMENDED BE CONCURRED IN. Motion was unanimously adopted. Rep. Williams will carry SB 31 on the floor.

Mr. Stoll further explained the inheritance tax problems to the committee. When asked where he thought it would be best to cut down, his recommendation was to allow dependents a lesser exemption.

Rep. Dassinger recommends a rate change rather than a change in exemptions.

Rep. Fabrega moved to amend page 11, line 8, following: "When", insert: "permission has been granted to defer payment of taxes under 84-919. Motion carried.

Rep. Sivertsen moved to make this effective on passage and approval. Motion carried unanimously.

The above motions were made and voted on before the bill as an amended whole was recommended concurred in.

SENATE BILL 252 - Rep. Fabrega moved that SB 252 be taken off Tabled status. Motion carried unanimously.

Rep. Lien moved that SENATE BILL 252 BE CONCURRED IN. Motion carried.

Meeting adjourned at 10:30 a.m.

Herb Huennekens

REP. HERB HUENNEKENS, CHAIRMAN

65.

HOUSE OF REPRESENTATIVES
COMMITTEE ON TAXATION AMENDMENTS TO SENATE BILL 31

APRIL 7, 1977

Amend in the third reading copy as follows:

1. Amend title, line 7.
Following: "EXEMPTIONS;"
Insert: "PROVIDING AN EFFECTIVE DATE;"

2. Amend page 1, section 1, line 13.
Following: line 13
Insert: "Section 1. Section 91-4405, R.C.M. 1947, is amended to read as follows:

"91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property. Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, is inscribed in ~~co-ownership~~ coownership form, or held by two or more persons in joint tenancy ~~by-two-or-more-persons,~~ or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer. The tax is upon the transfer of ~~decedent's-interest,-one-half-or-other-proper-fraction,-as-evidenced by-the-written-instrument-creating-the-same,-as-though-the-property-to-which the-transfer-relates-belonged-to-the-joint-tenants,-tenants-by-the-entirety, joint-depositors,-holders-in-co-ownership-form,-or-persons,-as-tenants-in-common, and-had-been,-for-inheritance-tax-purposes,-bequeathed-or-devised-to-the-survivor or-survivors-by-will,-except-such-part-thereof-as-may-be-shown-to-have-originally belonged-to-the-survivor-and-never-to-have-belonged-to-the-decedent.~~ the full value of the property, except that portion owned by the survivor. ~~This-section shall-not-be-construed-to-repeal-or-modify-the-provisions-of-section-91-4402.~~"

Renumber subsequent sections.

3. Amend page 11, section 4, line 8.
Following: "When"
Strike: "a bond"
Insert: "permission"

4. Amend page 11, section 4, line 9.
Following: line 8
Strike: "is given"
Insert: "has been granted to defer payment of tax"

5. Amend page 14, section 6, line 5.
Following: line 5
Insert: "Section 6. Effective date. This act is effective on passage and approval."

AS AMENDED
BE CONCURRED IN

79

SENATE BILL NO. 31

INTRODUCED BY COMMITTEE ON TAXATION, MATHERS, CHAIRMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE INTERIM SUBCOMMITTEE ON TAXATION, REVISING AND UPDATING THE MONTANA INHERITANCE TAX WITH REGARD TO JOINT ESTATES AND EXEMPTIONS; AMENDING SECTIONS 91-4405, 91-4409, 91-4410, 91-4414, 91-4416, 91-4419, AND 91-4453, R.C.M. 1947~~; AND PROVIDING AN EFFECTIVE DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 91-4405, R.C.M. 1947, is amended to read as follows:~~

~~"91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property. Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, is inscribed in co-ownership~~ coownership form, or held ~~by two or more persons~~ in joint tenancy by two or more persons, or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer. The tax is upon the transfer of decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property to which the transfer relates belonged to the joint tenants, tenants by the entirety, joint depositors, holders in co-ownership form, or persons as tenants in common, and had been, for inheritance tax purposes, bequeathed or devised to the survivor or survivors by will, except such part thereof as may be shown to have originally belonged to the survivor and never to have belonged to the decedent. ~~the full value of the property, except that portion originally owned by the survivor.~~ This section shall not be construed to repeal or modify the provisions of section 91-4402."

~~SECTION 1. SECTION 91-4405, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:~~

~~"91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property. Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, inscribed in co-ownership form, or held by two or more persons in joint tenancy by two or more persons, or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the~~

REFERENCE BILL: Includes Free Joint Conference Committee Report Dated 4-13-77

~~survivor--or--survivors--to--the--immediate--possession---or ownership--is--a--taxable--transfer.--The--tax--is--upon--the transfer-of-decedent's-interest,-one-half--or--other--proper fraction,--as--evidenced--by-the-written-instrument-creating the-same,-as-though--the--property--to--which--the--transfer relates--belonged--to--the--joint--tenants,--tenants--by-the entirety,-joint-depositors,-holders-in-co-ownership-form,-or persons,-as-tenants-in-common,-and-had-been,-for-inheritance tax-purposes,-bequeathed--or--devised--to--the--survivor--or survivors--by-will,-except-such-part-thereof-as-may-be-shown to-have-originally-belonged-to-the--survivor--and--never--to have--belonged--to--the--decedent~~ the--full--value--of--the property,-except-that-portion-owned-by--the--survivor.--This section--shall--not--be--construed--to--repeal-or-modify-the provisions-of-section-91-4402."

SECTION 1. SECTION 91-4405, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property. Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, is inscribed in co-ownership form, or held by two or more persons in joint tenancy ~~by-two-or--more persons~~, or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or

more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer. The tax is upon the transfer of decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property to which the transfer relates belonged to the joint tenants, tenants by the entirety, joint depositors, holders in co-ownership form, or persons, as tenants in common, and had been, for inheritance tax purposes, bequeathed or devised to the survivor or survivors by will, except such part thereof as may be shown to have originally belonged to the survivor and never to have belonged to the decedent when the surviving joint tenant is a spouse of the decedent. In all other cases the full value of the property shall be taxable except such portion thereof that originally belonged to the survivor and as to which the decedent had made no contribution; if the decedent had made a contribution to the ownership of such property the amount of such contribution shall be taxable. This section shall not be construed to repeal or modify the provisions of section 91-4402."

Section 2. Section 91-4409, R.C.M. 1947, is amended to read as follows:

"91-4409. Primary rates, where remaining amount not in